
DATED 13th JUNE 2013

(1) SECRETARY OF STATE FOR EDUCATION

- and -

(2) Educational Assessment Australia (EAA UNSW)

PROVISION OF ITEM WRITING SERVICES

KEY STAGE 1 ENGLISH GRAMMAR, PUNCTUATION AND SPELLING

WORK PACKAGE 1

CONTRACT STA-0001_31

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THIS CONTRACT is made the day of 2013

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT("DfE"); and
- (2) **Educational Assessment Australia (EAA UNSW)**, 12-22 Rothschild Ave, Rosebery, NSW 2018, Australia

BACKGROUND

- A. The Standards and Testing Agency (STA) is an executive agency of DfE, and acting on behalf of the Secretary of State for Education, has a mandate to procure item writing services ("Item Writing Services" for Key Stage 1, 2 and 3 tests in English (Reading), English (Grammar, punctuation and spelling), Mathematics and Science ("Test Areas").
- B. Having conducted a pre-qualification exercise to identify suppliers qualified to deliver Item Writing Services STA has established lists of preferred suppliers for each of the Test Areas ("Preferred Supplier Lists"), and from time to time, issues an invitation to quote for Item Writing Services to all pre-qualified suppliers on the Preferred Suppliers Lists.
- C. The Supplier is included on the Preferred Supplier List for English grammar, punctuation and spelling and following a successful Response to ITQ for the Provision of English grammar, punctuation and spelling Key Stage 1 Item Writing, work package 1 dated 27 March 2013, has been appointed by DfE to deliver the Project for Item Writing Services, as described in Schedule 1.
- D. The Supplier is willing to deliver the Project described in Schedule 1 and agrees that it will be bound by and will deliver the Project in accordance with the terms and conditions of this Contract, including all schedules and appendices, the Specification in the relevant invitation to Quote and all annexes thereto.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract unless the context requires otherwise the provisions in the left hand column below shall have the meanings given to them shown opposite in the right hand column:—

Acceptance Criteria	The criteria to be met by the whole or any part of performance under a Critical Step to demonstrate that it fully complies with the requirements of this Contract as expressed in clause 7.6;
Acceptance Period	The period after delivery under clause 7.9.1 during which DfE shall review performance of a Critical Step and notify the Supplier of any defects in performance. The length of the Acceptance Period for each Critical Step shall be agreed between the parties following signature of this Contract;

Background IPRs	Any Intellectual Property Rights either (a) owned by the Supplier , its sub-contractors or any other third party prior to the commencement of this Contract; or (b) which have been created independently by either the Supplier or a third party outside the scope of this Contract but which are nevertheless used in the performance of the Project For the avoidance of doubt, Background IPRs do not include Created IPR;
Business Day	Any day on which clearing banks generally are open for business in the City of London;
Change in Law	Any change in Law which impacts on the performance of the Contract which comes into force after the Commencement Date;
Commencement Date	The date of this Contract;
Confidential information	All confidential and proprietary technical and non-technical, business and other information which may be disclosed by one party to the other and includes without limitation, in any form, oral or written, in the course of the relationship between the parties, written documents, drawings, plans, software in source code or in object code form, specifications, business secrets, methods, formulas as well as exchanged know-how but excludes information received from a third party free to disclose it; or information generally available to the public;
Created IPR	Any Intellectual Property Rights created pursuant to or under this Contract;
Critical Step	The Critical Steps as defined in clause 7 and detailed in Schedule 4;
Data Protection Legislation	The Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
Deliverables	The deliverables which form part of the Project and the Services as set out and described in the ITQ;

DfE	Refers to both the Department for Education and the Standards and Testing Agency, its executive agency, which has responsibility for procuring the Item Writing Services on DfE's behalf;
Disaster	An event beyond the reasonable control of either party which prevents or delays the Supplier from performing any of its obligations under this Contract or which would prevent or delay the Supplier from performing any of its obligations under this Contract if the Disaster Recovery Plan was not implemented;
Disaster Recovery Plan	A plan detailing reasonably foreseeable Disasters and the corresponding disaster recovery arrangements in accordance with clause 10;
Due Dates	The dates by which the Critical Steps must be completed as defined in clause 7 and detailed in Schedule 4;
Exception	A situation in which the Supplier considers that existing project plans can no longer be followed as defined in clause 9;
Exception Plan	A plan detailing revised project plans in accordance with clause 9;
Final Handover Date	The final date for handover of the Deliverables by the Supplier to DfE as specified in the ITQ;
Good Industry Practice	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;
Instalments	The payment stages into which the Payment is divided in accordance with clause 16.2;
Intellectual Property Rights	Patents, trademarks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, software, database rights, know-how, trade or business names and other similar rights or obligations, whether registrable or not in any country
Invitation to Quote or "ITQ"	The documentation, including the Specification of Requirements for Item Writing services, issued by DfE by way of a call for competition;

Law	Any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Supplier is bound to comply;
Minor Defect	Any failure or failures in relation to a Critical Step to comply with clause 7.3 (time of delivery) or clause 7.6 (quality) which in DfE's reasonable opinion is minor or superficial. Any such failure or failures shall be considered to be minor or superficial and therefore to fall within this definition if it is clearly capable of remedy within the period specified in clause 7.9.3 or otherwise capable of remedy without disruption to the timetable for completion of the Project;
Payment	The payment made under this Contract by DfE to the Supplier as set out in clause 16;
PID	The Project Initiation Document as described in the PRINCE2 protocol and containing a high level plan for the relevant Project divided into a number of stages and including acceptance criteria, a timetable and deadlines;
PRINCE2	PRINCE2, Projects in Controlled Environments, project management protocol as set out in "Managing Successful Projects with PRINCE2" – ISBN: 0 11 330855 8;
Project	The Project described in Schedule 1;
Project Stages	The periods for the Project which are defined in 6.1 and schedule 4;
Risk Log	A log maintained in accordance with PRINCE2 detailing reasonably foreseeable risks (other than Disasters) which may prevent the satisfactory and timely completion of any aspect of the Project including but not limited the deliverables set out in the PID and the Critical Steps with corresponding countermeasures and contingency arrangements designed to prevent or reduce the risk in accordance with clause 10;
Security Policy Framework	The suite of policy documents which together set out the standards, best practice guidelines and approaches that are required to protect UK Government assets;
Staff	All individuals within the category defined in clauses 15.1 and 15.2 including for the

	avoidance of doubt, any sub-contractors or agents of the Supplier engaged by the Supplier to deliver the Project under the Contract;
Stage Plans	Plans for the performance of the Project in each Project Stage, as defined in clause 6.1;
Supplier	The supplier identified in the recitals to this Contract;
Supplier's Response to ITQ	The tender for Item Writing services submitted by the Supplier in response to DfE's ITQ;
Unauthorised Person	Any person not included within the definition of Staff under this Contract or an employee of the Department for Education (including secondees from the Department for Education) who is not directly concerned with this Contract;

1.2 In this Contract unless the context otherwise requires

- 1.2.1 words in the singular include the plural and words in the plural include the singular;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4 references to Clauses and Schedules are references to the Clauses and Schedules of this Contract;
- 1.2.5 references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument;
- 1.2.6 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.7 the words "include," "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.8 reference to this Contract shall include reference to it after it has been amended, added to or replaced by a new contract.

1.3 The headings in this Contract shall not affect its interpretation and all the Schedules to this Contract constitute an integral part hereof.

2. THE PROJECT

- 2.1** The Supplier shall perform the Project in accordance with DfE's requirements, which shall include the completion of all deliverables and services within the Project in accordance with this Contract. The Supplier shall perform its obligations under the Contract in accordance with the performance standards set out in Schedule 1, the Law and Good Industry Practice. The Supplier shall ensure that all Staff involved in the Project shall perform with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the satisfactory performance of this Contract.
- 2.2** The Supplier shall ensure that the performance of the Project is fit for DfE's purposes, such purposes having been specified in the Specification of Requirements in the ITQ and the Supplier agrees that the timely performance of the Project shall be of the essence of the Contract, including in relation to commencing the Project within the time agreed or on a specified date agreed between the parties.
- 2.3** The Project shall be carried out in accordance with the provisions of the following documents in addition to this Contract:
- 2.3.1** Schedule 1: the Specification of Requirements including all annexes and incorporating the Security Policy Framework; and
- 2.3.2** The PID.
- 2.4** In the event of any conflict between the provisions of any of the documents listed in clause 2.3 and the provisions of the main body of the Contract then the provisions of the main body of this Contract shall prevail over all listed documents. In all other cases the documents are listed in order of priority (so that for example Schedule 1 shall prevail over the PID referred and so forth). Any questions arising on the interpretation of statements in any of the listed documents shall be resolved by DfE after consultation with the Supplier.

3. THE CONTRACT TERM

- 3.1** The Contract shall take effect on the Commencement Date and shall expire automatically on completion of the final Critical Step, or unless it is lawfully terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated ("Contract Term").
- 3.2** DfE may, at its sole discretion, terminate this Contract following completion of a Critical Step without incurring any termination charges provided that it complies with the notification process and period defined in 19.4 of this Contract.

4. GOOD FAITH

Both parties hereby agree that in the performance of their obligations and the exercise of their rights under this Contract and the Project, including but not limited to the exercise of their discretion where required so to do, they will at all times act in good faith. Without prejudice to

the generality of the foregoing, DfE's overriding consideration in making decisions in respect of the Project shall be the need to ensure, within the terms of this Contract, that the Project is performed successfully.

5. CHANGE CONTROL

- 5.1 The parties acknowledge that during this Contract changes may need to be made to Project plans and delivery methods. The parties agree that such changes and any changes to the Specification of Requirements in this Contract should be dealt with in accordance with this clause 5.
- 5.2 The parties will follow the change control and other project management techniques provided for in PRINCE2. For the avoidance of doubt, in following those techniques the parties shall identify whether any proposed change would constitute a material variation to this Contract. In the event that the change would constitute such a variation, the parties shall comply with clause 18 in addition to following the PRINCE2 change control procedure.
- 5.3 For the avoidance of all doubt, the resourcing and implementation of all contingencies and countermeasures provided for in the Risk Log and the Disaster Recovery Plan in accordance with clauses 10.1 to 10.5 are included within the Project and the Payment and do not constitute variations to the Contract.

Change in Law

- 5.4 The Supplier shall neither be relieved of any of its obligations to deliver the Project in accordance with the terms of this Contract nor be entitled to an increase in the Payment as a result of a Change in Law. If a Change in Law occurs or if DfE is informed that a Change in Law will occur during the Contract Term, DfE shall, to the reasonable extent that it can, provide written notice to the Supplier of the likely effects of that Change in Law stating as applicable:
- (a) which services are no longer required by DfE; and/or
 - (b) whether additions to the Project are required by DfE; and/or
 - (c) how any Project or services within it which the Supplier has commenced might be treated or affected because of a Change in Law.
- 5.5 In response to the notice given by DfE under clause 5.4 the Supplier will continue to deliver the Project save as expressly notified by DfE to the Supplier and the Supplier shall within fourteen (14) days notify DfE of the following:
- (a) that the Supplier accepts any change to the Project resulting from DfE's notice or provide to DfE any variation to DfE's notice under clause 5.4; and
 - (b) whether or not the Supplier requests any change to any Payments as a direct result of the change and/or any change to any terms of this Contract including the Specification of Requirements.

6. PROJECT PLANNING

- 6.1** The Project shall be divided into Project Stages, each ending in a Critical Step, which are specified in Schedule 4 and which shall be referred to in this Contract as "the Project Stages". The Supplier shall prepare a PID and detailed project plans for each Project Stage to DfE's satisfaction in good time in accordance with the Statement of Requirements and such plans shall be referred to in the Contract as the Stage Plans.
- 6.2** The Supplier shall perform the Project in accordance with the PID, the Statement of Requirements and the Stage Plans and shall in particular, but without prejudice to the generality of the foregoing, complete each Project Stage in accordance with such timetable and deadlines, specifications and acceptance criteria set out in this Contract.
- 6.3** DfE may at its sole option but acting reasonably vary the timetable and deadlines set out in the PID and the Stage Plans, provided that DfE shall consult with the Supplier regarding any such variation and in the event that the Supplier considers that any such variation would significantly hinder it in performing the Critical Steps in accordance with clause 7 the Supplier shall be entitled to refer the change to the change control and variation procedures in accordance with clauses 5 and 18 to determine and provide for the implications of the change.

7. CRITICAL STEPS

- 7.1** The Project shall be divided into a number of discrete obligations which shall be referred to in this Contract as Critical Steps and which are specified in Schedule 4.
- 7.2** The last dates of the Project Stages, being the dates by which the Critical Steps shall be completed, are as specified in Schedule 4 and shall be referred to in this Contract as the Due Dates.
- 7.3** Each Critical Step shall be performed by the Due Date and, subject to clause 7.4, performance after this date shall be considered to be late. The parties acknowledge that the completion of each Critical Step by its Due Date is vital to the satisfactory performance of the Project and that time is of the essence of this Contract in relation to the completion of each Critical Step by its Due Date, subject only to clause 7.9.3 and to the exercise of DfE's discretion under clause 7.9.3.2 in light of the particular circumstances of any breach.
- 7.4** The Supplier shall be deemed to have completed a Critical Step by the Due Date notwithstanding any delay beyond the date specified in accordance with clause 7.2 if:
- 7.4.1** such delay would not have occurred but for any act or omission of DfE, anything done or omitted to be done on DfE's instructions or any other act or omission of a third party which was beyond the reasonable control of the Supplier (for the avoidance of doubt such third parties do not include the Supplier's sub-contractors, for whose actions the Supplier remains liable as provided for in clause 26); or

7.4.2 such delay would not have occurred but for the occurrence of a Disaster;
and

7.4.3 the Supplier has implemented the Disaster Recovery Plan and/or the Exception Plan to DfE's reasonable satisfaction.

In these circumstances DfE shall consider after consultation with the Supplier what steps should be taken to remedy the situation and complete the Project within the timetable in this Contract.

7.5 Without prejudice to clauses 7.3 and 7.6 (time and quality of the essence), the Supplier shall notify DfE as soon as reasonably practicable and in any event within 2 Business Days in writing upon becoming aware of any delay or likely delay which might cause the Supplier to fail to perform a Critical Step by the Due Date and summarise the reasons for it. In these circumstances, without prejudice to its remedies as set out in this Contract, DfE shall consider, after consultation with the Supplier regarding the Exception Plan to be produced in accordance with clause 9, whether to take steps to remedy the situation and, if so, which steps should be taken. Such steps may include, where appropriate, postponing one or more Due Dates.

7.6 The parties acknowledge that it is vital to the satisfactory performance of the Project that the Critical Steps are completed to specification in accordance with Schedule 1. References to satisfactory completion of the Project or any Critical Step shall be read as referring only to performance in accordance with this clause 7.6, and references to time being of the essence refer equally to the quality of the performance as to the time of delivery of performance. Each Critical Step shall have been fully and satisfactorily performed if:

7.6.1 The standards outlined in Schedule 4 are met;

7.6.2 Such further criteria and requirements as may be specified in the PID are met;

provided that in determining under this clause 7.6 whether a Critical Step has been fully and satisfactorily performed DfE may also take into account any finding in a report by DfE's Audit section and/or a report by an external auditor or investigating body that the Supplier's performance has been of an unsatisfactory standard or has failed to meet the relevant Acceptance Criteria notwithstanding any initial acceptance of performance by DfE under clause 7.6.1, to the extent that the Supplier's failure and/or initial acceptance by DfE were caused or procured by wilful default, knowing supply of incorrect information or fraud. For the avoidance of doubt, in the event that any default in performance by the Supplier is identified under this part of this clause 7.6, clauses 7.9.2 to 7.9.5 apply as regards notification of defects by DfE and remedy of defects by the Supplier as they would to any defect identified initially by DfE following delivery under clause 7.9.1.

7.7 For the avoidance of doubt, the Supplier shall not be deemed to have failed to complete a Critical Step in accordance with clause 7.6 unless it has failed to comply with a standard, specification or requirement which is set out and defined in this

Contract or otherwise agreed with the Supplier within a reasonable period prior to the relevant Due Date (including without limitation the relevant Acceptance Criteria), provided that it is the responsibility of the Supplier to seek (within a reasonable period prior to the relevant Due Date) clarification of any standard, specification or requirement, including without limitation any Acceptance Criterion, which it considers to be unclear or insufficiently defined.

7.8 Without prejudice to clauses 7.3 and 7.6 (time and quality of the essence), clause 16 (payment) or clause 19 (termination), the Supplier shall complete any part of a Critical Step that has not been completed by the Due Date and improve the quality of or replace any work done in connection with a Critical Step that does not meet with the reasonable satisfaction of DfE by implementing the Disaster Recovery Plan, the Exception Plan, the appropriate contingencies and counter-measures in the Risk Log or otherwise. The Supplier shall comply with this sub-clause 7.8 as soon as is practicable for the Supplier using all such resources as are reasonably available to the Supplier including but not limited to finance, Staff and equipment.

7.9 Acceptance or otherwise of the Supplier's performance of a Critical Step shall be determined in accordance with the provisions of this clause 7.9:

7.9.1 By the Due Date the Supplier shall deliver to DfE such materials as it is required by this Contract to produce by that date or such other evidence of performance of the Critical Step as is set out in Schedule 4 or as may have been agreed between the parties.

7.9.2 DfE shall within the Acceptance Period apply the relevant performance standards and Acceptance Criteria and notify the Supplier in writing as to whether it considers that the Supplier's performance of the Critical Step complies with this Contract, specifying any work which DfE considers necessary in order to remedy any defects in performance. The notification shall state whether the defects are considered to be Minor Defects and, to the extent that they are not Minor Defects, shall confirm DfE's decision under clause 7.9.3.2 below as to whether it wishes the Supplier to comply with its obligations under clause 7.8.

7.9.3 Defects in performance shall be dealt with as follows:

7.9.3.1 Minor Defects shall be remedied in accordance with the notification under clause 7.9.2 and re-submitted to DfE within seven Business Days after receipt of that notification, or such other period as the parties may reasonably agree. Provided that defects are remedied in accordance with this clause 7.9.3.1 the Supplier shall not be deemed to be in breach of clauses 7.3 and/or 7.6 and shall have complied with clause 7.6.1. Any failure to comply with this clause 7.9.3.1 shall be deemed to be a breach of clauses 7.3 and/or 7.6.

7.9.3.2 In the case of any defect other than a Minor Defect, or if any Minor Defects are not remedied within the period specified in

clause 7.9.3.1, DfE shall determine in accordance with its obligations under clause 3 whether to activate clause 7.8 or rely on its other rights and remedies under this Contract. Clause 7.8 shall be activated where the defect is capable of remedy without significant disruption to the timetable for completion of the Project and there have not been similar failures in relation to previous Critical Steps, or where DfE otherwise considers that activation of clause 7.8 is reasonable having regard to all the circumstances including the nature and extent of the defect(s) and the reasons for the failure to perform the Critical Step fully and on time, whether there have been similar failures in relation to previous Critical Steps and any plans prepared by the Supplier with a view to avoiding similar failures in the future.

7.9.4 For the avoidance of doubt, clauses 7.9 to 7.9.3.2 above apply equally where the Supplier fails to submit any of the required material to DfE by the Due Date for a Critical Step.

7.9.5 The terms of this clause 7.9 regarding performance by the Supplier of its obligations under clause 7.8 following a decision under clause 7.9.3.2 are without prejudice to the Supplier's duty under clause 7.8 to remedy as soon as is practicable all defects of which the Supplier is aware prior to the Due Date or of which it becomes aware subsequent to the Due Date but before it receives a list of work to be carried out.

7.10 In the event that the Critical Step or any part thereof fails to be accepted under clause 7.9, DfE shall be entitled, in addition to its other rights under this Contract or in law to use the materials created by the Supplier up to the date of that failure in order to complete or procure from a third party completion of the Critical Step.

8. PROJECT MANAGEMENT

8.1 DfE shall co-operate and liaise with the Supplier and provide such information, assistance and consents to the Supplier as are within its powers and are reasonably necessary to enable the Supplier to perform its obligations under this Contract. This shall include reasonable access to relevant personnel, documents or other materials and data or other information in DfE's possession which is necessary for the performance of the Project in accordance with any timetable, Critical Step or other target for progress or completion in agreed in writing between the parties and DfE shall use its reasonable endeavours to ensure the accuracy of all data or other information provided to the Supplier in the course of this Contract.

The Supplier shall:

8.2 Manage the Project in accordance with:

8.2.1 PRINCE 2;

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- 8.3 Obey all lawful instructions from DfE relating to the completion and conduct of the Project provided that DfE shall not give any instructions which in its reasonable opinion would be likely to significantly hinder the Supplier in performing the Critical Steps in accordance with clause 7 or require the Supplier to expend on the Project resources in excess of those which it is required by this Contract to expend;
 - 8.4 Consult and liaise with third parties as and when necessary or reasonably required by DfE including but not limited to other agencies involved in similar or related projects;
 - 8.5 Provide oral or written reports on the progress and management of the Project in accordance with the PRINCE2 requirements and as and when reasonably required by DfE and in particular without limitation prepare Highlight Reports and Checkpoint Reports as defined within PRINCE2.
 - 8.6 Attend and report to meetings with DfE to discuss any aspect of the Project as and when reasonably required by DfE;
 - 8.7 At the reasonable request of DfE, make available to DfE copies of any or all materials and documents and any data under the Supplier's control which is or has been produced or used in connection with the Project, except to the extent that compliance with this clause would render the Supplier in breach of its obligations under the Data Protection Act 1998 or any other statutory obligation. In considering whether any request from DfE is reasonable, regard shall be had to the ownership of the Intellectual Property Rights in the materials, documents and/or data;
 - 8.8 Allow reasonable access to DfE or its authorised representatives to any premises and any parts of any premises used in connection with the Project upon reasonable notice between the hours of 9am and 5:30pm (in addition to access under clause 17.1 (audit)).

9. EXCEPTIONS

- 9.1 An Exception to the Project shall be deemed to have arisen where the Supplier has notified DfE under clause 7.5 that it will or is likely to be unable to perform one or more Critical Steps by the Due Date or where the Supplier considers that it will not or that it is likely that it will not be able to meet other targets as to time, quality or cost of the Project contained in this Contract or otherwise agreed between the Supplier and DfE. For the avoidance of doubt, an Exception may arise from the occurrence of a Disaster, and when this is the case the Supplier shall implement the Disaster Recovery Plan immediately and shall thereafter comply with clause 9.2 if the Project remains in Exception.
- 9.2 Where one or more Exceptions has arisen the Supplier shall as soon as possible prepare for agreement by DfE an Exception Plan which shall replace the existing project plans and shall set out the manner in which the Exception(s) have arisen and detailed proposals for the management and completion of the Project in light of the Exception(s).

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- 9.3 The Exception Plan shall meet with the approval of DfE acting reasonably and shall be implemented by the Supplier as soon as possible after DfE has approved it.

10. RISKS AND DISASTERS

- 10.1 The Supplier shall maintain and review on at least a monthly basis a Risk Log and shall ensure that all contingencies and counter-measures identified in the Risk Log are adequately resourced and are implemented as and when necessary. Reviews of the Risk Log shall include identification of risks and in relation to each risk an estimation of its likelihood of occurrence, an estimation of probable impact and the planning and putting into place of contingency arrangements and counter-measures including all advance actions necessary to ensure swift implementation as and when necessary.
- 10.2 The Supplier shall maintain its own Disaster Recovery Plan which shall include reasonably foreseeable Disasters and the Supplier shall devise appropriate disaster recovery arrangements and take any and all advance actions required to ensure that the disaster recovery arrangements can be implemented in the event of the Disaster occurring and that as far as possible the Project can be completed. The Disasters included in the Disaster Recovery Plan shall include failures and delays by other DfE Suppliers which could have an impact upon the performance of the Project by the Supplier.
- 10.3 The Disaster Recovery Plan and all modifications thereto shall meet with the approval of DfE acting reasonably.
- 10.4 In the case of a Disaster caused by or constituted by computer or software failure or by industrial action the Disaster Recovery Plan shall ensure that in the event that such a Disaster occurs the Project is disrupted or delayed to the minimum extent possible. In the case of all other Disasters the Disaster Recovery Plan shall ensure that in the event that a Disaster occurs the Project is disrupted or delayed to the minimum extent that is reasonably practicable.
- 10.5 If and when any Disaster occurs the Supplier shall implement the Disaster Recovery Plan.

11. DATA PROTECTION AND FREEDOM OF INFORMATION

- 11.1 With respect to the parties' rights and obligations under this Contract, the parties acknowledge that, except where otherwise agreed, DfE is the Data Controller and the Supplier is the Data Processor.
- 11.2 Where the Supplier, pursuant to its obligations under this Contract, undertakes the Processing of Personal Data on behalf of DfE, it shall comply with the Data Protection Legislation and more particularly:

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- 11.2.1 Process the Personal Data only in accordance with instructions from DfE (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by DfE to the Supplier);
 - 11.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Project or as is required by Law or any Regulatory Authority;
 - 11.2.3 Take reasonable steps to ensure the reliability of any Supplier Staff who have access to the Personal Data;
 - 11.2.4 Obtain prior written consent from DfE in order to transfer the Personal Data to any third parties for the provision of the Project;
 - 11.2.5 Ensure that all Supplier Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out under this Clause;
 - 11.2.6 Ensure that none of Supplier Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by DfE;
 - 11.2.7 Notify DfE within seven days if it receives: (a) a request from a Data Subject to have access to that person's Personal Data; or (b) a complaint or request relating to DfE's obligations under the Data Protection Legislation;
 - 11.2.8 Provide DfE with full cooperation and assistance in relation to any complaint or request made, including by: (a) providing DfE with full details of the complaint or request; (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with DfE's instructions; (c) providing DfE with any Personal Data it holds in relation to a Data Subject (within the timescales required by DfE); and (d) providing DfE with any information requested by DfE;
 - 11.2.9 Not Process Personal Data outside the European Economic Area without the prior written consent of DfE and, where DfE consents to a transfer, to comply with: (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and (b) any reasonable instructions notified to it by DfE;
 - 11.2.10 Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
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- 11.2.11 At the termination of this Contract, destroy or return to DfE all Personal Data processed pursuant to the Data Processor's obligations under this Contract.

FREEDOM OF INFORMATION

- 11.3 The Supplier acknowledges that DfE is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (collectively the "FOI Legislation") and shall assist and cooperate with DfE to enable DfE to comply with its disclosure obligations.
- 11.4 The Supplier shall transfer to DfE all requests for information under FOI Legislation that it receives as soon as practicable and in any event within three (3) days of receiving a request for information or an apparent request under the FOI Legislation or ("FOI Request") and provide all necessary assistance as reasonably requested by DfE to enable DfE to respond to the FOI Request within the time for compliance set out in FOI Legislation. In no event shall the Supplier respond directly to a FOI Request unless expressly authorised to do so by DfE.
- 11.5 The Supplier acknowledges that DfE may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose information without consulting or obtaining consent from the Supplier, or despite having taken the Supplier's views into account.
- 11.6 The Supplier shall ensure that any documents that it considers may be partially or fully exempt from disclosure under the FOI are clearly marked indicating the basis of such exemption (whether "commercially sensitive" or otherwise). Notwithstanding the foregoing, DfE shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOI Legislation.

12. CONFIDENTIALITY

- 12.1 The terms of this Contract are confidential to DfE and the Supplier shall not disclose these terms to any Unauthorised Person other than its professional advisors and its Insurers without the prior written consent of DfE, such consent not to be unreasonably withheld.

12.2 The Supplier shall not disclose the Confidential Information to any Unauthorised Person unless it has obtained the prior written permission of DfE, such permission not to be unreasonably withheld.

12.3 The Supplier shall use reasonable endeavours to prevent any Unauthorised Person from obtaining any Confidential information from the Supplier, its Staff or any agent or representative of the Supplier. Without prejudice to the generality of the foregoing, in this regard the Supplier shall ensure that Staff are bound by appropriate confidentiality agreements, shall maintain awareness of the risk of breaches of security in its arrangements for holding documents, data and materials relating to the Project and shall maintain secure systems which are fully compliant with Good Industry Practice and are designed to prevent such breaches from occurring and to minimise the extent and effect of any breach. In particular but without prejudice to the foregoing, such systems shall be designed to prevent any person from obtaining access to Confidential Information save where consent to disclosure has been given by DfE within the terms of this Contract. The nature and content of such systems shall be reviewed regularly by the Supplier and implementation shall be subject to approval by DfE.

12.4 The Supplier shall inform DfE immediately if it comes to the attention of the Supplier that an Unauthorised Person or Unauthorised Persons may have obtained Confidential Information or there has been a breach or vulnerability has been discovered in the Supplier's security and confidentiality arrangements. Without prejudice to the further remedies available to DfE under this Contract, the Supplier shall make good any such breach or vulnerability as soon as and to the extent which is practicable.

12.5 Nothing in this clause 12 shall be taken as precluding either party from disclosing information or documents to any governmental or regulatory body as required by law.

13. ANNOUNCEMENTS AND PUBLICATIONS

13.1 This clause 13 is without prejudice to the generality of clause 12.

13.2 Subject to clause 13.3, no public announcements or other disclosure by or on behalf of the Supplier and relating to the fact of this Contract or the terms hereof shall be made without the prior consent of DfE as to the timing, contents and manner thereof.

13.3 Clause 13.1 does not apply to a public announcement or other disclosure required by law or by any applicable regulation or requirement of any applicable stock exchange, subject, where practicable, to prior consultation between the parties as to the contents of any such announcement or disclosure.

13.4 For the duration of this Contract the Supplier may publish material describing or referring to its work on the Project only with the prior consent of DfE (not to be unreasonably withheld) and following consultation with DfE regarding the wording of any descriptions of the Project, its aims and its outcomes.

14. INTELLECTUAL PROPERTY RIGHTS AND PROJECT DATA

14.1 The Background IPRs and the Created IPRs shall be subject to the following provisions:

14.1.1 All Background IPRs in which the Intellectual Property Rights are owned by DfE ("DfE Background IPRs") shall remain the property of DfE. For the avoidance of doubt DfE Background IPRs include all rights in any source materials supplied by DfE to the Supplier. DfE hereby grants a non-exclusive royalty-free licence to the Supplier to use and reproduce any DfE Background IPRs only insofar as is necessary for the performance by the Supplier of its obligations under the Contract and for the duration of this Contract and for no other purposes, with the right to sub-license only with the prior written consent of DfE. The Supplier shall not otherwise disseminate to any third party any materials containing any DfE Background IPRs including (without limitation) any copyright or database rights without the prior written consent of DfE;

14.1.2 The Supplier warrants that for the purpose of developing and creating the Deliverables, it is licensed and entitled to use those Background IPRs in the Deliverables which are owned by third parties. All Background IPRs in which the Intellectual Property Rights are owned by or licensed to the Supplier ("Supplier Background IPRs") shall remain the property of the Supplier. The Supplier hereby grants to DfE a perpetual non-exclusive royalty-free licence (with right to sub-license) to use and reproduce all Supplier Background IPRs in the Deliverables, howsoever DfE sees fit in relation to the Project and/or any successor project and in particular where:

14.1.2.1 DfE uses sub-contractors for consultancy;

14.1.2.2 Consultants are used to carry out pre-test activities;

14.1.2.3 Markers are used for reviewing marking schemes; and for

14.1.2.4 such other uses of the Background IPRs as DfE may reasonably notify to the Supplier during the Contract Term

provided that DfE shall give the Supplier reasonable notice of such further requirements and provide the Supplier with such information as is reasonably necessary to enable the Supplier to obtain such relevant waivers and licences as may be required;

14.1.3 All Created IPRs developed or created by the Supplier shall belong to and vest in DfE absolutely and the Supplier shall procure that all Created IPRs developed or created by any third party shall also belong to and vest in DfE absolutely. The Supplier shall not have (nor shall it purport to exercise) any right of lien or set off or counter claim over or in respect of materials to the extent that they contain Created IPRs.

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- 14.1.4 The Supplier undertakes at the request of DfE at all times from the date of this Contract to, and to procure that any and all of its sub-contractors and any third party involved in the Project shall:
- 14.1.4.1 do all acts and execute all documents, papers, forms and authorisations and to dispose to or swear all declarations or oaths reasonably necessary and/or desirable to secure in DfE absolute full right, title and interest to the Created IPR and/or to confer upon DfE all rights of action against third parties; and
 - 14.1.4.2 take all reasonable steps to assist DfE in maintaining and enforcing all Created IPR.
- 14.2 For the avoidance of doubt, nothing in clause 14.1 shall give DfE the right to prevent the Supplier from using in connection with work other than the Project any business process, research information, personal experience or expertise or underlying technology used or acquired in the production or adaptation of materials for the purposes of the Project, except insofar as such information, materials or technology are included in or an integral part of any materials produced or adapted for the purposes of this Contract.
- 14.3 Save with the prior consent of DfE the Supplier shall not and shall ensure that none of the Staff shall at any time use the name style or logo of DfE or any other entity so as to convey the meaning or impression of being or of being in any way connected with or associated with DfE and shall not encourage or assist others to do so.
- 14.4 For the avoidance of doubt, all references in this clause 14 to the licensing of intellectual Property Rights to or by DfE or to the ownership or vesting of intellectual Property Rights in DfE shall be construed as referring to DfE as part of the Crown.

PROJECT DATA

- 14.5 For the purposes of clauses 14.8 to 14.13, "DfE Data" shall mean all data made available by DfE to the Supplier pursuant to this Contract and all data that is Created IPR.
- 14.6 The Supplier shall not delete or remove any proprietary notices contained within or relating to the DfE Data.
- 14.7 To the extent that DfE Data is held and / or processed by the Supplier, the Supplier shall supply that DfE Data to DfE as requested by DfE in the format specified in Schedule 1, or if Schedule 1 is silent in relation to the format, DfE's reasonable instructions.
- 14.8 The Supplier shall take responsibility for preserving the integrity of DfE Data and preventing the corruption or loss of DfE Data.
- 14.9 The Supplier shall perform secure back-ups of all DfE Data and shall ensure that up-to-date back-ups are stored off-site in accordance with Schedule 1 and clauses 14.7

to 14.13. The Supplier shall ensure that such back-ups are available to DfE at all times upon request.

14.10 If the DfE Data is corrupted, lost or sufficiently degraded as a result of the Supplier's default so as to be unusable, DfE may:

14.10.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of DfE Data to the extent and in accordance with Schedule 1 and clauses 14.7 to 14.13 and the Supplier shall do so as soon as practicable; and / or

14.10.2 itself restore or procure the restoration of DfE Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with Schedule 1 and clauses 14.7 to 14.13.

14.11 If at any time the Supplier suspects or has reason to believe that DfE Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify DfE immediately and inform DfE of the remedial action the Supplier proposes to take.

15. STAFF

15.1 The Supplier acknowledges that appropriately qualified and experienced staff are essential to the proper delivery of the Project to DfE and shall employ or procure the services of all necessary Individuals to deliver the Project as set out in Schedule 1 and including any necessary temporary and reserve cover. All aforementioned categories of Individuals engaged on the Project shall be referred to in this Contract as the Staff and those Individuals whose work is determined to be key to successful delivery ("Key Staff") shall be listed at Schedule 6. The qualifications, experience and aptitude of all proposed and current Staff shall meet with the reasonable satisfaction of DfE.

15.2 The Supplier shall appoint a Project Manager and a Deputy Project Manager. Either the Project Manager or the Deputy Project Manager shall be reasonably contactable by telephone or email at all times during any Business Day. The Supplier shall inform DfE immediately if a Project Manager or Deputy Project Manager resigns or for any other reason ceases to work on the Project.

15.3 Any and all Key Staff who terminate their employment or their service contract or for any other reason ceases to work on the Project for the Supplier shall be replaced as soon as reasonably practicable by the Supplier. Such replacements shall be of at least equal status or of equivalent experience and skills to those Key Staff being replaced unless otherwise agreed in writing with DfE. The Supplier shall provide appropriate replacement cover at its own cost for any and all Key Staff who are unable through illness or other reasons to carry out the duties from time to time assigned to them.

15.4 The Supplier shall inform DfE of all Key Staff who resign or for any other reason cease to work on the Project and shall inform DfE of proposed appointments to meet such vacancies. The Supplier shall obtain DfE's prior written approval to the

appointment of all Project Managers or Deputy Project Managers, such approval not to be unreasonably withheld or delayed, and DfE shall be entitled to request the removal of the Project Manager or Deputy Project Manager on the basis of clear evidence of failures or defects in performance. The Supplier shall take due account of any evidence of performance failures by other Key Staff which is supplied by DfE and shall respond promptly to such evidence.

- 15.5 The Supplier shall ensure that all Staff receive appropriate and sufficient training in accordance with Schedule 1 and that all Staff have attained school leaving age.
- 15.6 Insofar as Schedule 1 provides, and in the event that the Supplier states in the Supplier's Response to the ITQ or agrees with DfE, that particular Key Staff will devote a specified proportion of their time to the performance of this Contract then the Supplier shall ensure that such Key Staff shall devote the agreed proportion of their time to the performance of this Contract.
- 15.7 The Supplier shall in relation to any and all Staff engaged in the Project comply with the Baseline Personnel Security Standard ("BPSS"). This requires the Supplier to verify and obtain information on the matters set out below
- 15.7.1 the identities of those Staff;
 - 15.7.2 their employment history (for a minimum of past 3 years);
 - 15.7.3 their nationality and immigration status and
 - 15.7.4 for Staff who will be in direct contact with children over a sustained period of time an Enhanced Disclosure from the DBS.
- 15.8 The Supplier must, in all cases, take reasonable steps to confirm the accuracy of the information provided in accordance with the verification process set out in the BPSS Guidance. For the avoidance of doubt, the Supplier shall not be entitled to any additional payment as a consequence of carrying out the above checks.
- 15.9 There is no requirement to repeat the Baseline Standard for any individual who has been subject to the Baseline Standard three months prior to the Commencement Date and that have remained continuously employed by the Supplier.
- 15.10 Nothing in this clause 15 removes the responsibility of the Supplier to ensure that it complies with the provisions of the Data Protection Act in respect of access to and retention of data held by the Supplier.

16. PAYMENT

- 16.1 In consideration of the Supplier's performance of its obligations under the Contract DfE shall pay the Supplier an amount in relation to the Project set out in Schedule 3 and which shall be known as the Payment. DfE shall have no additional or separate liability to the Supplier for the costs incurred by the Supplier in delivering the Project or otherwise in relation to the Contract save to the extent that additional costs are expressly agreed as a variation to Schedule 3.

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- 16.2** The Payment shall be divided into instalments corresponding to the Critical Steps in accordance with Schedule 4 and as set out in this clause 16 and Schedule 3.
- 16.3** Each Critical Step shall be an entire obligation and an instalment of the Critical Step Payment shall only fall due upon the complete performance of the corresponding Critical Step in accordance with clauses 7.3 and 7.6. Subject only to clause 16.8 below, DfE shall not be liable to pay an Instalment or any other payment in respect of a Critical Step which has only been partially performed.
- 16.4** For the avoidance of doubt, references to partial performance of a Critical Step cover both performance which is late in breach of clause 7.3 and unsatisfactory performance which is in breach of clause 7.6. The Supplier shall be deemed to have completely performed a Critical Step notwithstanding the existence of any Minor Defect as long as all Minor Defects are remedied within the remedy period specified in clause 7.9.3 but in these circumstances the instalment for that Critical Step shall not fall due unless and until the Critical Step is re-submitted to DfE and accepted under clause 7.9.
- 16.5** Without prejudice to DfE's other remedies and rights under this Contract or otherwise the Supplier shall reimburse DfE within 30 days of receipt of a detailed and itemised written request for all costs reasonably incurred by DfE arising from or in consequence of the Supplier's failure to perform a Critical Step fully in accordance with clauses 7.3 and 7.6 (time and quality) (including for the avoidance of doubt any failure to remedy Minor Defects within the period specified in clause 7.9.3 (remedy of Minor Defects)) and/or clause 7.8 (remedy of deficiencies) or any breach of clause 12 (Confidentiality).
- 16.6** All sums due to either party from the other party under this clause 16 which are not paid on the due date shall bear interest from day to day at the annual rate of 3% over current Barclays Bank plc daily base rate with a minimum of 5% per year.
- 16.7** DfE may at its sole option and to the extent that it has legal power to do so make a discretionary payment in respect of the partial performance of a Critical Step and such discretionary payment shall not signify acceptance of any partial performance as being complete, satisfactory and by the Due Date. In considering under this clause 16.7 whether to exercise its discretion to make a payment under this clause, DfE shall act in accordance with its obligations under clause 4 and shall have due regard to the extent to which DfE is able to use any materials delivered to it by the Supplier, the extent and causes of the Supplier's failure to perform and the impact or expected impact of the Supplier's failure to perform on the timetable for successful completion of the Project.
- 16.8** DfE shall pay each Instalment (if and so far as DfE is liable to pay such instalment under the terms of this Contract) within 30 days of receipt of an Invoice from the Supplier.
- 16.9** The Supplier shall send no more than one invoice to DfE in relation to each Critical Step. All Invoices must clearly state to which Critical Step each relates.
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- 16.10 The invoice for the last Critical Step shall be received by DfE no later than 30 days following the completion of the Project or Acceptance of the last Critical Step, whichever is the later.

17. ACCOUNTS AND AUDIT

- 17.1 The Supplier shall keep full and accurate records of the Contract which give a fair and accurate account of receipts and payments received or incurred in connection with the Project and keep such records available for inspection upon reasonable notice by DfE, any Crown body and its authorised representatives (the Auditors) for at least 6 years from the end of the year to which they relate.
- 17.2 In the event that the Supplier fails to meet its obligation under clause 17.1 the Supplier shall reimburse DfE and/or the Auditors for the costs of any visit by themselves or their representatives at which that failure of the Supplier results in them or their representatives being unable to carry out or complete the actions which were the purpose of their visit and such costs shall include travel and subsistence costs and salaries of the visiting team.
- 17.3 The Supplier shall sign the accounts referred to in clause 17.1 through a duly authorised officer (being a person acceptable to DfE) and a copy of such signed accounts shall be delivered to DfE.
- 17.4 DfE and/or the Auditors may carry out a financial, quality and/or value for money audit once during the Project and the Supplier shall provide its full co-operation including but not limited to providing access to any premises used in connection with the Project upon reasonable notice and at any reasonable time to DfE, the Auditors or their authorised representatives.
- 17.5 In the event that DfE, the Auditors or their authorised representatives form the reasonable opinion that the Payment or any part of the Payment that has been made at the date such opinion is formed exceeds the amount for which DfE is liable under the provisions of clause 16 and Schedule 3 of this Contract, the amount of any excess shall be repaid by the Supplier to DfE within 30 days of receipt of notice from DfE. In particular and without prejudice to the generality of the foregoing the Supplier shall repay within 30 days of receipt of notice from DfE the excess of any Payment calculated according to rates different from those specified in Schedule 3.
- 17.6 In the event that the audit reveals any material non-compliance with the terms of the Contract by the Supplier, then the Supplier shall reimburse the Auditors reasonable costs and expenses (including legal costs) associated with the audit.

18. VARIATION

- 18.1 This Contract may not be varied except under this clause 18 by an instrument in writing signed by the Supplier's authorised representative and by DfE's authorised representative in advance of any expenditure or any commitment to make any expenditure to which it relates. The instrument shall be in the format set out in

Schedule 7 of this Contract and shall incorporate or attach details of all variations being made to the clauses and/or Schedules of this Contract.

18.2 in particular and subject only to clause 18.3, DfE shall not be liable for any additional costs incurred by the Supplier in complying with any instruction or requirement where the Supplier has not completed the variation formalities in accordance with this clause 18. In particular DfE shall not be liable for any additional costs incurred by the Supplier in complying with any instruction or requirement in relation to which the Supplier has not sought clarification from DfE pursuant to clause 7.7 and/or activated the change control procedure in accordance with clause 5 before completing the variation formalities in accordance with clause 18.1.

18.3 In the event that compliance with any instruction or requirement which the Supplier considers to be a variation to this Contract is required before the date by which the parties would reasonably be able to complete the change control process in accordance with clause 5, the Supplier shall comply with the instruction and DfE shall reimburse the Supplier for any costs incurred in addition to those which would have been incurred in performing the Project in any event if and to the extent that the requirement is identified through the change control procedure as constituting a variation to the Contract.

19. TERMINATION

19.1 As provided for in clause 3.1 this Contract shall expire on completion of the Project unless terminated at an earlier date in accordance with this clause 19.

19.2 Without prejudice to any other rights of DfE each of the following events shall constitute a repudiatory breach of this Contract entitling DfE to terminate this Contract by written notice to the Supplier with immediate effect if:

19.2.1 The Supplier breaches clause 7.3 (time of performance) and/or clause 7.6 (quality of performance), including for the avoidance of doubt any failure to remedy Minor Defects within the period specified in clause 7.9.3;

19.2.2 The Supplier breaches clause 7.8 (remedy of defects);

19.2.3 The Supplier breaches clause 10.4 (Implementation of Disaster Recovery Plan)

19.2.4 The Supplier breaches clause 12 (confidentiality);

19.2.5 the Supplier, being a company, is the subject of a petition presented or an order made or a resolution passed or analogous proceedings taken for appointing an administrator of or winding up such company or suffers an encumbrancer to take possession, or to exercise or attempt to exercise any power of sale, or a receiver or administrative receiver to be appointed, of the whole or any part of the undertaking, property, assets or revenues of such company or stops payment or agrees to declare a moratorium or becomes or is deemed to be insolvent or unable to pay its debts within the

meaning of Section 123 of the Insolvency Act 1986; or (whether the Supplier is a company or any other type of entity), without the prior consent of DfE it ceases or threatens to cease to carry on its business in the normal course; and

19.2.6 the Supplier commits a material breach of its obligations to comply with DfE's security requirements as notified to it by DfE, or in the alternative, of its obligation to comply with the provisions of the Security Policy Framework which apply to the delivery of the Project in clause 2.3.1 (delivery of the Project).

19.3 The Supplier shall be entitled to terminate this Contract by written notice to DfE with immediate effect if:

19.3.1 DfE fails to pay a due invoice within the period specified in clause 16.8; and

19.3.2 DfE fails to remedy that breach within 21 days after receiving written notice from the Supplier that it has not received payment.

19.4 DfE, at its sole discretion may, without prejudice to any of its other rights or remedies, terminate this Contract for any reason upon 1 (one) month's written notice.

For the avoidance of doubt termination takes effect at the end of the period of notice.

19.5 If this Contract is terminated by DfE under clause 19.4, DfE may require the Supplier to cease or run down any work on the Project.

19.6 If this Contract is terminated by DfE under clause 19.4 DfE shall:

19.6.1 Promptly reimburse the Supplier for all services performed by the Supplier in accordance with this Contract up to the date of service of the notice of termination; and

19.6.2 Promptly reimburse the Supplier for all costs incurred by the Supplier after the date of service of notice of termination which have been authorised in advance by DfE or which could not reasonably have been avoided

but DfE shall not otherwise be liable to the Supplier for costs incurred or services performed on termination under clause 19.4.

19.7 On the termination of this Contract howsoever caused, the Supplier shall deliver up to DfE in accordance with the timescales set out in clause 19.8 any and all materials documents and data records in the Supplier's possession or control which relate to the Project or this Contract to the extent that DfE owns those materials, documents and data records or the Intellectual Property Rights therein or is licensed under this Contract to use them, and to the extent that DfE reasonably informs the Supplier on termination that the materials, documents and data records are urgently required for the continuation of the Project.

19.8 The Supplier shall perform its obligation under sub-clause 19.7:

19.8.1 if this Contract is terminated two days before the date for completion of a Critical Step, within 8 hours of receipt of notification (which for the purposes of this sub-clause 19.9.1 may be sent by fax); or

19.8.2 If this Contract is terminated more than two days before the date for completion of a Critical Step, within three days before the date for completion of the Critical Step whichever is the sooner.

20. SURVIVAL OF TERMS

20.1 All rights and obligations of the parties shall cease to have effect immediately on termination or expiry of this Contract except that termination shall not affect the accrued rights and obligations of the parties at the date of termination and nothing in the Contract shall prejudice the right of either party to recover any amount outstanding at such termination or expiry.

20.2 Without prejudice to the generality of clause 20.1, the rights and remedies of both parties under clauses 11 (Project Data, Data Protection and Freedom of Information) 12 (Confidentiality), 14 (Intellectual Property Rights) 16 (Payment), 17 (accounts and audit) and 21 (Indemnity) shall not be affected or prejudiced by the termination or expiry of this Contract.

21. INDEMNITY

21.1 Subject only to clause 21.2, the Supplier shall keep DfE fully indemnified against:

21.1.1 all actions, claims and proceedings brought by any third party including in relation to any infringement of any third party intellectual property rights, including but not limited to all legal costs or other expenses relating to such actions, claims and proceedings; and

21.1.2 all damages or compensation paid by DfE to any third party (including any damages or compensation paid by DfE to any third party on the advice of its legal advisors to compromise or settle any claim)

arising out of any breach by the Supplier of clauses 7.3 (time of performance), 7.6 (quality of performance), 7.8 (remedy of incomplete or substandard performance) or 12 (confidentiality) or out of any claim by a third party based on facts which if substantiated would constitute such a breach. For the avoidance of all doubt references to breach by the Supplier cover actions by the Supplier's Staff and/or any sub-contractors.

21.2 No payment of damages or compensation shall be made to a third party to compromise or settle any claim without the consent of the Supplier's Insurer unless the Supplier's Insurer has failed to respond to a request for consent within any reasonable deadline specified by or on behalf of DfE. In the event that DfE considers that the Supplier's Insurer has unreasonably withheld consent to a settlement, the

parties shall act in accordance with independent legal advice regarding the proposed settlement which shall be obtained on the joint instructions of DfE's legal advisors and the Supplier's Insurers.

21.3 The Supplier shall indemnify and keep indemnified DfE from and against all or any sums, payments, liabilities, damages, fines, penalties, expenses (including legal expenses on an indemnity basis) charges, costs, claims and losses whatsoever incurred suffered or paid by DfE, arising out of or in connection with any act or omission (or alleged act or omission) of the Supplier which occurred on or after the date of the Contract in relation to or in connection with the employment, or termination of employment, of any Staff, including without limitation any obligation to any trade union representative, staff association representative, other employee representatives or, DfE or any Staff, whether under regulation 10 of the TUPE Regulations, the Trade Union and Labour Relations (Consolidation) Act 1992 or otherwise in respect of any employee of the Supplier or a sub-contractor..

21.4 The Supplier acknowledges that DfE will be relying upon information provided to DfE by the Supplier in the ITQ and any deliverable under the Contract to be accurate and complete in all material respects and the Supplier hereby agrees to indemnify DfE to the extent that DfE sustains any loss or liability arising from any material deficiency or inaccuracy of the information including but not limited to any liability arising from any claim made by any person who sought or would have wished to be the person to whom the contract to be tendered was awarded.

22. NO CORRUPTION

Neither the Supplier nor any employee or agent of the Supplier shall offer, give or agree to give to DfE, its staff or agents any inducement or reward for doing or refraining from doing or having done or refrained from doing any act in relation to the obtaining or execution of this Contract or any other Contract or for showing or refraining from showing any favour or disfavour to any person in relation to this Contract or any other Contract.

23. EQUAL OPPORTUNITIES

23.1 The Supplier shall have a written Equality and Diversity policy with demonstrable impact and outcome that complies with Clause 23.2 or shall sign a statement confirming adoption of DfE's Equality and Diversity policy for the duration of the Contract. The Supplier shall make a statement of such policy or confirmation of such adoption available to DfE upon request.

23.2 The Supplier's Equality and Diversity policy shall relate to all forms of unlawful discrimination which is prohibited under Article 14 of the European Convention on Human Rights and the Equality Act 2010.

23.3 The Supplier shall ensure that, in carrying out its obligations under this Contract, neither it nor any of its sub-contractors commits or incites another to commit an act of discrimination rendered unlawful, or any act of discrimination which if committed by DfE would be rendered unlawful, by the Equality Act 2010 or the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 or the Fixed-term

Employees (Prevention of Less Favourable Treatment) Regulations 2002 or the Human Rights Act 1998.

23.4 The Supplier shall ensure that it and its sub-contractors perform their obligations under this Contract in a manner which enables DfE to comply and to demonstrate compliance with the general public duty imposed on DfE under the Equality Act 2010. In particular but without prejudice to the generality of the foregoing, the Supplier shall, subject to Clause 23.5:

23.4.1 comply with all reasonable policies developed by DfE with regard to compliance with the duties imposed on DfE by and under the Equality Act as are relevant to the delivery of the Project and as are amended and notified to the Supplier by DfE from time to time;

23.4.2 comply with all reasonable directions from DfE with regard to the delivery of the Project in accordance with the Equality Act 2010;

23.4.3 collect and supply to DfE such data and other information as DfE may reasonably request with a view to ensuring and demonstrating compliance by the Supplier with the Equality Act;

23.4.4 provide all reasonable assistance, and consultation and liaison with, DfE with regard to any assessment of the impact on and relevance to the delivery of the Project of the duties imposed by the Equality Act and the development or modification of the Equality Act Policies relevant to the provision of the Services.

23.5 Where:

23.5.1 any requirement imposed on the Supplier under this Clause 23 to comply with the Equality Act or other legislation referred to in Clause 23 ("Equality Legislation") constitutes an addition or alteration to the policies and requirements specified in this Contract; and

23.5.2 DfE is satisfied that in complying with that requirement the Supplier will incur expenditure significantly additional to that which would otherwise be incurred by the Supplier in complying with Equality Legislation, such requirement shall be incorporated into this Contract through the change control mechanism referred to in clause 5. Prior to any such change taking effect, the Supplier shall use all reasonable endeavours to comply with the requirement.

24. FORCE MAJEURE

24.1 Subject to the Supplier's obligations under clauses 9.1, 9.2 and 10.1 – 10.5 and without prejudice to DfE's rights under clause 19.2.3, neither party shall be in breach of this Contract to the extent that it is prevented from performing its duties and obligations under this Contract by any reason beyond the control of such party

resulting from act of God, governmental regulation, fire, war, terrorist activity, pandemic or civil commotion ("Force Majeure").

- 24.2 If either party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay in performing or failure to perform, its obligations under the Contract it shall immediately notify the other and in any event within two (2) Business Days of becoming aware, by the most expeditious method then available and shall inform the other of the circumstances giving rise to the Force Majeure and the period for which it is estimated that such failure or delay shall continue.
- 24.3 If such Force Majeure prevents either party from performing its material obligations under the Contract for a period in excess of 1(one) month then either party may terminate the Contract with immediate effect by notice in writing.
- 24.4 If this Contract is terminated in accordance with clause 24 each party shall remain liable for any rights and obligations and liabilities accrued before such termination.
- 24.5 Each party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of any Force Majeure. The Supplier shall undertake such disaster prevention works and maintain such disaster recovery systems as maybe reasonably expected to be set up by competent persons required to perform the Project affected by the Force Majeure.

25. NO WAIVER

No failure or delay by either party to exercise any right, power or remedy shall operate as a waiver of that right, power or remedy nor shall any partial exercise preclude any further exercise of the same, or of any other right, power or remedy. No waiver shall be effective unless it is expressly stated to be a waiver and is communicated to the other party in writing in accordance with clause 31 (Notices).

26. ASSIGNMENT, NOVATION, SUB-CONTRACTING AND SUCCESSORS

- 26.1 The Supplier may not assign any of the benefits of this Contract or transfer or sub-contract any of the burdens of this Contract without the prior written consent of DfE. In the event that the Supplier sub-contracts any of its obligations under this Contract (including any contracts for services with any Staff) the Supplier shall remain responsible for all its obligations hereunder and for the acts and omissions of any such sub-Supplier.
- 26.2 Any consent granted by DfE under clause 26.1 shall be subject to such conditions as DfE acting reasonably sees fit.
- 26.3 DfE shall be entitled to assign novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

26.3.1 any Contracting Authority as defined in Regulation 3 of the Public Contracts Regulations 2006;

26.3.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by DfE; or

26.3.3 any private sector body which substantially performs the functions of DfE,

26.4 The Contract shall bind and inure to the benefit of any assignees of DfE or any successor body to DfE.

27. WARRANTY AS TO CAPACITY

Each party warrants and represents to the other that it has full authority power and capacity to enter into this Contract and that all necessary actions have been taken to enable it lawfully to enter into this Contract.

28. ENTIRE CONTRACT

This Contract together with the Schedules and the documents incorporated by reference contains the whole Contract between the parties in respect of the Project and supersedes any prior written or oral Contract between them relating to it. DfE accepts liability for any representations which have become warranties in relation to this Contract and for any fraudulent misrepresentations made on its behalf but shall not be liable for any other representations including negligent misrepresentations.

29. ALTERNATIVE DISPUTE RESOLUTION

29.1 If there is a dispute between the parties in relation to whether (and, if so, what) payment is due from the Supplier to DfE under clauses 16.5-16.7 or 21 or from DfE to the Supplier under clauses 16.7 or 19.6, or in any further circumstances where one party seeks a payment from the other in consequence of an alleged breach of this Contract, the provisions of this clause 29 shall apply (without prejudice to clause 34).

29.2 The parties shall use all reasonable endeavours to resolve the dispute themselves within 28 days of the dispute arising. If the dispute remains unresolved at the end of the period specified in this clause 29.2, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure (the "*Model Procedure*").

29.3 To initiate a mediation either party may give notice in writing ("*ADR Notice*") to the other party requesting a mediation in accordance with clause 29.2. A copy of the request should be sent to CEDR.

29.4 The procedure in the Model Procedure shall be amended to take account of:

-
- 29.4.1 any relevant provisions in this Contract; and
- 29.4.2 any other Contract which the parties may enter into in relation to the conduct of the mediation.
- 29.5 If there is any point on the conduct of the mediation (including as to the nomination of the mediator) on which the parties cannot agree within 14 days of service of the ADR Notice, CEDR will, at the request of any party, decide that point for the parties, having consulted with them.
- 29.6 The mediation will start not later than 28 days after the date of service of the ADR Notice.
- 29.7 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.
- 29.8 Unless this Contract has been terminated by the date on which the dispute shall be deemed to have arisen, the obligations of the parties under this Contract shall not cease, or be suspended or delayed by the reference to the Dispute Resolution Procedure set out in this clause and both the Supplier and DfE shall comply fully with the requirements of the Contract at all times.

30. SET OFF

- 30.1 Subject to DfE complying with clause 30.2, whenever, pursuant to the terms of this Contract, any sum of money is or may be payable by or recoverable from the Supplier on account of any actual or anticipated claims, damages, losses or expenses arising out of the Supplier's negligence or default then DfE may deduct or set-off the amount of such sum from any sum then due or which at any time thereafter may become due from DfE to the Supplier under this Contract.
- 30.2 If DfE wishes to make any deduction or set-off from any amounts due to the Supplier under this Contract it shall give to the Supplier notice of the same which notice shall specify:-
- 30.2.1 the amount proposed to be withheld and the ground for withholding payment; or
- 30.2.2 if there is more than one ground, each ground and the amount attributable to it.

31. NOTICES

- 31.1 All notices and other communications under this Contract shall be made in writing and given to the other party (sent by hand, by first class pre-paid mail either recorded delivery or special delivery) and will be deemed to have been communicated upon the date of actual delivery, provided that the parties may agree to serve notices by facsimile transmission or item of electronic mail (confirmed in either case by letter). The respective addresses for service of notices under this Contract shall be as set out below:

For DFE:

Chris Davies, Standards and Testing Agency, 53-55 Butts Road, Earlsdon Park, Coventry, West Midlands, CV1 3BH

For the Supplier:

Sofia Kesidou, Educational Assessment Australia (EAA UNSW), 12-22 Rothschild Ave, Rosebery, NSW 2018, Australia

Where the terms of this Contract provide for notice to be served by facsimile transmission or item of electronic mail then provided the relevant communication is not returned as undelivered the notice or communication shall be deemed to have been communicated upon the date and at the time stated on the successful transmission receipt unless such date and time is outside the hours of 8:30am to 5:30pm Monday to Friday excluding bank holidays in which case the notice will be deemed to have been communicated at 8:30am on the next day excluding Saturdays, Sundays and bank holidays.

- 31.2 Either party may change its address for service by serving a notice upon the other party in accordance with this clause.

32. ENFORCEABILITY AND SEVERANCE

Any provision of this Contract which is held invalid or unenforceable for any reason by any court of competent jurisdiction shall be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof. The remainder of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

33. CUMULATIVE REMEDIES

No right or remedy conferred by either party is exclusive of any other right or remedy contained in this Contract or as the Law may provide, but each shall be cumulative of every right or remedy given in the Contract now or hereafter existing and may be enforced concurrently therewith or from time to time.

34. FURTHER ASSURANCE

Each party shall from time to time at the reasonable request of the other party execute any additional documents and do any other acts or things which may reasonably be required to implement this Contract.

35. JURISDICTION

This Contract shall be governed by and construed in accordance with the laws of England and each party agrees to submit to the exclusive jurisdiction of the courts of England.

36. LIABILITY, MITIGATION AND INSURANCE

36.1 The total aggregate liability of the Supplier to DfE under the terms of this Contract, including but not limited to liability under clause 21, shall not exceed 125% of the value of the Contract.

36.2 Both parties hereby agree that they are obliged to mitigate their losses (or potential losses) as a result of any breach of their obligations under this Contract in respect of which either DfE or the Supplier has or is likely to make a claim. The party seeking to make a claim shall submit a fully itemised and costed list of those costs which it is seeking to recover from the other together with supporting evidence of losses reasonably and actually incurred and stating the reasonable steps taken to mitigate such losses.

36.3 The Supplier shall carry insurance, including but not limited to professional liability, employer's liability and occupier's liability insurance, with financially viable insurers of good repute against its liabilities under this Contract. Such insurance shall be in amounts acceptable to DfE and the Supplier on request shall provide DfE with reasonable evidence of compliance with this clause 36.3, such evidence to include copies of policies and premium receipts.

36.4 Where the Supplier holds insurance DfE shall only pay those costs approved by DfE between the date of service of a notice to terminate served under clause 19 and the date of termination of the Contract which are not covered by the insurance available. DfE reserves the right to review the Supplier's relevant insurance policies to satisfy itself that those costs are not covered by insurance.

36.5 DfE shall not be liable to pay any sum which:

(a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

(b) when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Contract Term.

(c) is a claim by the Supplier for loss of profit and/or staff costs including redundancy costs, due to termination of the Contract.

37. THIRD PARTY RIGHTS

The rights of any third party under this Contract, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, are hereby excluded.

38. NO PARTNERSHIP, AGENCY OR JOINT VENTURE

Nothing in this Contract shall constitute or imply, or be deemed to constitute or imply, any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Contract. Nothing in this Contract shall be deemed to constitute either party the agent of the other party, and

neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

SIGNATURE PAGE

SIGNED by ...Colin Watson.....
for and on behalf of the **Secretary of State for**
Education

C Watson
.....
13/06/13 (Signature)
.....
(Date)

SIGNED by *Sofia Kesidou*.....
Director for and on behalf of the **Supplier**

[Signature]
.....
31/5/2013 (Signature)
.....
(Date)

SCHEDULE 1 - SPECIFICATION OF REQUIREMENTS

Introduction

This Schedule includes the Specification of Requirements (SoR) with respect to the Items and mark schemes for the Key Stage 1 English grammar, punctuation and spelling.

The Supplier has been successfully selected to complete Work Package 1.

Functional Requirements

Assessment type: National Curriculum Assessment – for pupils at the end of Key Stage 1

Item Development and Design: The number of marks stated for each work package outlined below is the total number of marks which must be provided at final handover. Suppliers will need to ensure sufficient items are created to allow for any losses during the process.

Item Writing requirements for each subject:

4.3.2 English grammar, punctuation and spelling

The items are destined for tests that assess elements of grammar, punctuation and spelling, as set out in the new draft National Curriculum programme of study for English at Key Stage 1.

Proposed final test format

There will be three test components: a written ('extended') task, a booklet of contextual and short-answer items, and a spelling task.

The booklet of contextual and short-answer items (Paper 2) will be comprised as follows:

Contextual items: 10 marks of thematically linked short-answer items. The nature of the contextual element of the 2016 test is subject to ministerial decision. Two options (short text stimulus and integrated text stimulus) are under consideration and will be taken to trial alongside any further, innovative format generated by work package 4. Key vocabulary associated with the passage or theme will be introduced to children on an illustrated introductory page and the text or questions may be read aloud to children during the test.

Short-answer items: 10 marks of short answer items. Children will work through this paper without a teacher's / test administrator's support.

In work packages 1, 2 and 3, STA requires 360 marks of new and acceptable short answer and contextual items, as well as a suite of 12 extended tasks worth 240 marks, and a series of 12 spelling tasks totalling 120 marks. Work Package 4 consists of 60 marks of innovative contextual items and Work Package 5 consists of 4 innovative extended tasks totalling 80 marks.

Summary of work packages

	Short answer items	Contextual items	Extended tasks	Spelling tasks	TOTAL marks

Work packages 1, 2, 3 (each)	40 marks	80 marks	4 tasks (80 marks)	4 tasks (40 marks)	240
Work package 4 (Innovative contextual items)	-	60 marks	-	-	60
Work package 5 (Innovative extended tasks)	-	-	4 tasks (80 marks)	-	80

The nature of some elements of the 2016 test is subject to ministerial decision and some details of the test model are therefore not confirmed at this stage. The STA wishes to encourage Innovation in all work packages.

Work Package 1 (total: 232 marks)

Short answer items

For each of work packages 1, 2 and 3, the supplier must produce 40 marks of short-answer items and a mark scheme for each item.

Contextual items

For the contextual element of work packages 1, 2 and 3, the supplier must produce 80 marks of short-answer items and a mark scheme for each item. These should be presented as:

4 sets of 10 marks of items, with each set based on a different short text stimulus [see Annex for example].

4 sets of 10 marks of integrated text stimulus items [see Annex for example].

mark schemes for each item.

Extended tasks

Each extended task will be worth 20 marks (of which 3 marks are for handwriting), as detailed in the test framework, and must identify a clear text type, audience and purpose for writing. For each of work packages 1, 2 and 3, the supplier must produce 4 extended tasks, presented as:

- 2 written prompts (similar in nature to that of the previous Key Stage 1 writing tasks, adapted for suitability to assess the new content domain for Paper 1). The supplier should produce an accompanying stimulus (i.e. an illustrated poster, leaflet, or other format giving ideas and vocabulary to support writing) for each written prompt. The prompt may also provide children with a possible opening sentence for their writing or a writing frame.
- 2 prompts using an illustrated (i.e. storyboard) format, inviting children to write text to accompany a series of pictures (e.g. to produce a set of instructions or to write a short narrative).

- A mark scheme for each task.

Spelling tasks

The spelling task will consist of 10 target words. For each of work packages 1, 2 and 3, the supplier must produce 4 spelling tasks, presented as:

- 2 tasks using contextualised sentences (with the target word omitted).
- 2 tasks using an illustrated, picture-based format.
- A mark scheme for each task.

Short answer and contextual items

(i) Content domain

The supplier must ensure that, at handover, the items are in the following approximate proportions across the areas of the content domain, further details of which are specified in the 2016 test framework:

Test reference code	Proportion of items
G1 Grammatical terms/word classes	21%
G2 Features of sentences	12%
G3 Complex sentences	15%
G4 Standard English	10%
G5 Formal / Informal English	5%
G6 Punctuation	25%
G8 Word-building	12%

Suppliers should refer to the framework document for a full list of assessable elements.

(ii) Mark allocation

For short-answer items, a minimum of 80% of the marks at handover should be derived from single-mark items. Up to 20% may be derived from 2-mark items. No item should exceed 2 marks.

Of the 10 marks in each contextual paper, a minimum of 8 should be derived from single-mark items. Up to 2 marks may be derived from 2-mark items. No item should exceed 2 marks.

(iii) Cognitive demand

The supplier must ensure that, at handover, the total marks of the short-answer and contextual items are in the following approximate

proportions for cognitive demand. Further details, definitions and examples can be found in the test framework.

Cognitive level	Response complexity	Abstraction rating	Strategy support rating
Drawn from levels 1-4 (Knowledge, Comprehension, Application, Analysis). Of these, the majority (80-100%) will be drawn from levels 1-3.	Drawn from across levels 1-6, within limits for selected response (65-85%) and constructed response (15-35%) formats	Drawn from levels 1-2. Further, the supplier should aim to create contexts that are appropriate, appealing and engaging for pupils at the end of Key Stage 1.	Drawn from across levels 1-3.

Mark schemes for all subjects

Mark schemes must be developed for all items.

The mark schemes must provide sufficient and clear guidance for teachers to:

- allow marks to be allocated reliably, with consistency and accuracy
- enable marking to be manageable
- enable the marking of the tests to be effectively standardised
- have a principle to define what is correct
- include examples of responses that illustrate the range of correct responses and possible incorrect or insufficient responses. Ideally, mark scheme exemplars should be drawn from informal trialling, where the items have been trialled.

The mark schemes should:

- Clearly and succinctly communicate the marking principles for creditworthy and possible non-creditworthy responses to each item
- Be straightforward to apply and recognise and reward pupils' responses appropriately

Item and mark scheme design

The items must be designed, using Adobe InDesign (or equivalent subject to prior agreement), such that they match as closely as possible the style of the supplied Key Stage 1 tests in relation to all design elements including font, font size, spacing, diagram style and illustration style. Templates will be provided to all winning bidders.

Mark schemes should be submitted in Microsoft Word 2010 (or compatible subject to prior agreement) at Hard Copy Handover (see below). The mark schemes should also match the style and layout of the supplied Key Stage 1 mark schemes as far as possible.

<p>Artwork, texts and other external materials</p>	<p>Written test item texts, artwork or data All graphics that are fundamental to the questions and mark schemes (e.g. data sources, diagrams, photographs) must be produced and supplied at Final Handover.</p> <p>Where texts, artwork or data have been commissioned, please include the original material, contact details for the creator of the material, and a statement confirming assignment of the intellectual property rights ("IPR") in the material from the creator to DfE. The formal assignment of the relevant IPR in the commissioned work must be completed by the Final Handover Date.</p> <p>Where there is a third party owner of any materials, it should be referenced as described below.</p> <p>Referencing source materials and artwork Any materials using externally sourced texts, artwork or data need to be fully referenced; including title, name of copyright owner, name of the author/editor/creator, details of the edition, publisher and page/location of the material within the source. If sourced from the web, a print out of the original website, showing the relevant artwork or data must also be included.</p>
<p>Item classification</p>	<p>The Supplier must classify all items according to the fields on the item classification spreadsheet, and present the item information on the spreadsheet template supplied. An example spreadsheet is provided in Annex B and final version will be provided to successful supplier(s) at or before the start-up meeting This spreadsheet should be included with the materials presented at Hard Copy Handover and Final Handover (see below).</p>
<p>Quality Assurance (English reading only)</p>	<p>Accuracy checks must be carried out on all the information texts submitted. This check should be carried out by a researcher / expert in the field of the subject matter.</p> <p>Readability checks are also required on individual texts. The checks required are:</p> <ul style="list-style-type: none"> • Word count • Flesch-Kincaid • New Dale-Chall • New Fog Count • Spache • SMOG <p>The results of these checks must be reported in writing to STA.</p>
<p>Informal Trialling</p>	<p>The purpose of the trial is to find out qualitative data in terms of how the questions are working and to produce examples of real responses for the mark schemes.</p> <p>We expect between 40% and 60% of items in each work package to require informal trialling. The items to be trialled will be agreed with STA at a pre-trial meeting. Suppliers should cost for trialling 100% of items in the</p>

work package and should provide costs for trialling 40% and 60% of the items required. The values provided will be used for evaluation purposes. These will also be used as a starting point with successful bidders in relation to the actual numbers of items which are included in the informal trial.

Items must be informally trialled with at least 50 pupils in year 2. Agencies will need to ask for groups of more mixed ability children and some more vocal children in each group. There needs to be a range of schools in the trial with a maximum of 12 pupils per school trialling each booklet. Trialling researchers will need to discuss the trialling booklets in detail with at least half the children.

For the in depth discussions, they should work with small groups of children (no more than 6 at a time) and discuss the items as they work through the materials. Children can comment on anything they didn't understand, and the triallers can ask why a child may have given a particular response amongst other things. Not all items need to be discussed, but that will largely be determined by the subject.

Trialling agencies will be responsible for determining item order /arrangements within the informal trials.

Trialling agencies can determine the usefulness of a questionnaire for teachers.

There is no requirement to collect quantitative data as a result of this trial as the nature of the samples will not be representative.

Qualitative feedback should include the following for each question:

1. Summarise overall pupil ability and general experience in relation to the topic area (should be restated for every question)
2. Brief summary of performance on the question, including misunderstandings, misconceptions, non-attempts and any instances of children getting the correct answer for the wrong reason (n.b. 'misunderstandings' are errors where the child misinterpreted what the question was asking them to do, possibly as a result of wording or layout. These are different to 'misconceptions' where the child makes an error due to their limited ability/experience of the topic being assessed. It can be difficult to distinguish between the two from reviewing question responses, so this is where discussion with pupils can help. Misunderstandings and correct answers for wrong reasons should be addressed in revisions to questions following informal trialling.)
3. Detail and rationale for any amendments made or proposed to address points identified in 2.
4. Any suggestions about position of question in booklet, if the question was found significantly easier / more difficult than expected

For guidance purposes, some examples of the type and quantity of feedback per item is given below:

- *The majority of children who trialled this question were working at the target level for the question. Children in one school were unfamiliar with the topic, children in the other two schools understood the concepts involved. Although the question was poorly answered in one school, the majority of children in the other*

	<p><i>schools answered correctly and there was no evidence of any common errors. No amendments to the question are required.</i></p> <ul style="list-style-type: none"> • <i>The trial included a range of children working above, at and below the target level for the question. Several children at and above the target level were misled by the presentation of the diagram and completed an incorrect calculation as a result. The question has been amended to clarify the diagram. This remains a difficult question, so should probably be positioned later in the test</i> • <i>Most children in the trial had been taught the topic area. A common wrong answer for the first part of the question was 22. This demonstrated a misconception regarding how to complete the calculation and was generally seen among less able children. The more able children in the trial generally answered this part correctly. Few children were able to answer the second part correctly; generally they did not realise that they were meant to use their answer to part (a) to help them answer part (b). Part (b) has been reworded to reinforce the link between parts.</i> <p>Trialling in the UK is preferable, although this may not be possible if the UK school summer holidays interfere with development timelines.</p> <p>STA staff would like to accompany the trialling agency on a small number of visits to schools to observe if feasible, and by prior arrangement.</p> <p>Informal trialling must be completed no later than 27 September, although trialling in the Summer term will make it considerably easier to meet post-trialling deadlines.</p> <p>Feedback from the informal trial will be presented at the interim handover meeting.</p>
<p>Interim Handover</p>	<p><i>Interim Handover must occur no later than week beginning 30 September 2013.</i></p> <p>The following materials must be sent to STA:</p> <ul style="list-style-type: none"> • <i>InDesign files of at least 50% of the test items in order for STA to check their compliance with the Design specification. For this purpose, the files need to be submitted according to the specification and the template (provided at the start-up meetings) but do not need to be the latest or final versions of the files. Remaining items should be supplied in InDesign or MS Word (or compatible) format.</i> • <i>Microsoft Word 2010 (or compatible subject to prior agreement) files for all mark schemes</i> • <i>PDF versions of all items and mark schemes – the PDF of items and mark schemes should be compiled into two files only; one containing all test items/questions and the other for all the mark schemes.</i> • <i>Informal trialling report</i> • <i>Item classification spreadsheet in Microsoft Excel 2010 (or compatible), with summary table(s) showing coverage across Attainment targets and levels and any other information as indicated by the supplied template (Annex B)</i> • <i>For the materials being presented, provide a summary table showing coverage across the content and cognitive domains in all</i>

	<p>subjects and coverage across the assessable elements in English Reading.</p> <p>As a result of informal trialling, item writing agencies will need to send to STA the following documents prior to the Interim handover meeting:</p> <ul style="list-style-type: none"> • Three clean copies of all the trialling booklets • A set of materials containing the suggested mark-ups or amendments as a result of the Informal trialling and any other items that were not trialled • A report listing the points above and other feedback obtained during informal trialling. <p>STA and the contracted agencies will review the supplied materials at the Interim Review meeting (no later than week beginning 7 October 2013). The supplier will then make any revisions or amendments as necessary as a result of the discussions at that meeting.</p>
<p>Final Handover</p>	<p><i>Final Handover Meeting must occur during the week beginning:</i></p> <ul style="list-style-type: none"> • 4 November 2013 for Mathematics; • 25 November 2013 for English reading; and • 25 November 2013 for English grammar, punctuation and spelling <p>The following materials must be handed over by the Final Handover Meeting:</p> <ul style="list-style-type: none"> • Hard copies of the following: <ul style="list-style-type: none"> ○ 36 copies of all items and mark schemes ○ Classification spreadsheets classifying items in terms of the attainment targets item type of each item, and other information using the template supplied. ○ Copyright statement (including all formal documentation for copyright transfer) • An encrypted memory stick (provided by STA) containing the following: <ul style="list-style-type: none"> ○ A single Adobe Indesign (or compatible subject to prior agreement) files for each individual test item with associated links and files ○ Microsoft Word 2010 (or compatible subject to prior agreement) files for the mark schemes ○ Individual PDF files for each question and associated mark scheme (i.e. two files per question). ○ A combined PDF of all items and another combined PDF of all mark schemes. ○ A reference document that details the sources of any data and artwork/images used in the test items ○ All artwork/images used in the test items as unflattened files with all layers intact within the image file where applicable. Please ask for clarification on specific file types which are

	<p>acceptable</p> <ul style="list-style-type: none"> ○ A copy or copies of the updated classification spreadsheet(s), including a table summarising the number of marks assessing each assessment focus. ○ For the materials being presented, provide a summary table showing coverage across the content and cognitive domains in all subjects and coverage across the assessable elements in English Reading. <ul style="list-style-type: none"> ● Assignments and/or licences of IPR in the commissioned and other third party works to be completed by the Final Handover Date – as stated in the PQQ and the Contract, and all documentation relating to IPR. ● In addition to the handover of the above materials, the purpose of the Final Handover meeting (which will last at least one full working day) is to discuss the items and the rationale for all amends made. The meeting will be chaired by STA and take place in STA offices in Coventry or London. If any errors or amendments are identified during final handover the supplier is required to carry these out within one week of the Final Handover meeting.
<p>Acceptance of Final Handover</p>	<p>Following Final Handover, STA will check the provided materials. If any errors are found, all materials will be returned to the supplier for a full check and for amendments to be carried out. An error free set of materials should be returned to STA no later than two weeks after the Final Handover Date.</p>

SCHEDULE 2 – NOT USED

NOT USED

SCHEDULE 3 - PAYMENT

1. The Total Charges for Work Package 1 shall be £49,880.00. This work excludes VAT, which will not be paid.
2. The Critical Steps Payment is divided into the following Instalments corresponding to the Critical Steps:

Milestone Payment	Requirement/Critical Steps	Payment Timescale	Amount £ (Excl. VAT)
1	Interim Handover (50%)	07/09/2013	£24,940
2	Final Handover (50%)	16/12/2013	£24,940
Total amount payable			£49,880

SCHEDULE 4 - CRITICAL STEPS

Project Deliverables/Outputs and Critical Steps

The Project deliverables/outputs are provided in the table below, and individual deliverables or outputs are indicated as Critical Steps where appropriate. All deliverables and outputs are categorised as mandatory and it is essential that you confirm that you can meet them, in full, and by the milestone date set. Failure to provide confirmation in your proposal documents may result in your proposal being rejected.

Steps 5, 6 and 7 are provided with a "no later than" Due Date to accommodate informal trialling taking place after the UK school summer holiday. However, from a school, STA and overall project perspective it would be preferable for trialling to take place before the end of the UK summer term.

The specific date for all Requirements 1 – 9 must be included within the project plan in the response to the Technical Evaluation.

No	Deliverables/Outputs	Acceptance Criteria	Due Date
1	Start-Up Meeting Provide: <ul style="list-style-type: none"> • Detailed plan for item and mark scheme production for review and joint sign-off • Detailed project risk and issue log (Risk Log) for review and joint sign-off • Project Initiation Document (PID) 	Project Director / Project manager (or equivalent) attend the Start-Up Meeting and provision of listed documents by agreed date.	Week beginning Error! Reference source not found.
2 (English reading only)	Text selection meetings Provide 200% of the required texts from which the final texts will be selected for further development and item writing. Justification for text selection may be requested at this meeting	Project Director / Project manager (or equivalent) attend the text selection meeting and provide texts a week in advance for consideration.	Week beginning 17 June 2013
3	Checkpoint Meetings and Management Information To attend five Checkpoint meetings. These meetings may be held as telephone conference	Project manager (or equivalent) attends each	To be agreed at start-up

No	Deliverables/Outputs	Acceptance Criteria	Due Date
	calls, and may also be combined with other meetings if appropriate. Checkpoint reports to be submitted to STA two working days in advance of each Checkpoint meeting.	Checkpoint meeting on agreed date and submission of Checkpoint report two working days in advance of each checkpoint meeting.	meeting
4	<p>Pre-Trial Meeting</p> <p>To agree which items need to be informally trialled.</p> <p>The outcome of this meeting will determine the final cost for informal trialling.</p>	Project manager (or equivalent) attends meeting on agreed date and submission of draft items in advance meeting by agreed date.	At least two weeks before trialling starts
5	<p>Informal Trialling- Critical Step</p> <p>It would be desirable from a school and agency perspective for trialling to be completed before the end of the summer term (in the UK) if at all possible.</p> <p>Agreed items informally trialled with specified number of pupils.</p>	100% of agreed items trialled with specified number of schools and pupils.	Complete no later than 27 September 2013
6	<p>Interim Handover – Critical Step</p> <p>Provide electronic copies of all draft item and mark schemes, informal trialling report and draft item classification spreadsheet(s). The interim handover needs to include mark-ups or amendments based on informal trialling results.</p> <p>Handover three hardcopies of all Informal Trialling booklets and mark schemes/coding frames.</p> <p>The Contractor must handover InDesign versions of at least 50% of the items at the interim handover stage in order for STA to check that the materials meet the Design specification. Feedback will be provided at the Interim Handover meeting on this aspect. The remaining items to be handed over in InDesign or MS Word (or compatible) format.</p>	100% of drafts of all materials required for completion of work package(s) received electronically by agreed date and to criteria specified in section 4.3.	No later than week beginning 30 Sept 2013

No	Deliverables/Outputs	Acceptance Criteria	Due Date
7	<p>Interim Review Meeting with STA and item writers to review materials and outputs from informal trialling.</p>	<p>Project Manager / Lead Item Writer attend Interim Review meeting on agreed date.</p>	<p>No later than week beginning 7 Oct 2013</p>
8	<p>Final Handover Hard Copy Handover - Supplier to hand over hard copies of the items, mark schemes and item classification grid. A template for the item classification grid is provided at Annex B. Final Handover – Supplier to hand over an encrypted memory stick (provided by STA) containing electronic files of the items and mark schemes, source references, artwork, copyright statement and the item classification grid. Assignment/licences of IPR for DfE's benefit completed. The handover is to take place in a meeting at STA offices wherever possible.</p>	<p>100 % of specified hard copy materials received at STA by agreed date and materials are of appropriate quality as listed under Performance Requirements. Receipt of electronic materials specified and attendance at Final Handover meeting on agreed date ("Final Handover Date")</p>	<p>Maths: w/b 4 Nov 2013 English Reading: w/b 25 Nov 2013 English GPaS: w/b 25 Nov 2013</p>
9	<p>Acceptance of Final Handover materials – Critical Step If any errors are found following Final Handover or the materials are not compliant with this specification, all materials will be returned to the supplier for full checking and correction. Final payment will be withheld until this is completed. Fully checked and corrected materials should be returned no later than two weeks after the Final Handover date.</p>	<p>100% of specified of materials with STA no later than two weeks after Final Handover Date. All materials to be error free.</p>	<p>No later than two weeks after Final Handover Date</p>

SCHEDULE 6 - KEY STAFF

In accordance with clause 15.1 the following individuals are determined as Key Staff:

Name	Position	Telephone Number	Email
Kerry Tremaine	Project Director	+612 8344 1067	k.tremaine@eaa.unsw.edu.au
Jennifer Cowing	Project Manager	+612 8344 1063	j.cowing@eaa.unsw.edu.au
Marjorie Lobban	Item Development Manager	+612 8344 1072	m.lobban@eaa.unsw.edu.au
Matthew Crompton	Assessment Officer	+612 8344 1000	m.crompton@eaa.unsw.edu.au
Phillip Arthur	Review Manager	+612 8344 1073	p.arthur@eaa.unsw.edu.au

SCHEDULE 7 - VARIATION TO CONTRACT

Contract Name	Contract No:
Supplier's Name	Budget Code

Variation Number:

I hereby agree to the following extension/variation of this Contract, to be covered by the existing terms save for the specified additions or alterations to the Supplier's obligations and the specified additions to the Payment:

Additional Work and/or Period of Extension	Additional Cost

This extension/variation will increase the maximum value of the Contract from £[] to £[].

Signed for and on behalf of the Secretary of State for Education (DfE)

Signature *Name (printed)*.....

Position *Date*.....

Signed for and on behalf of the Supplier

Signature *Name (printed)*.....

Position *Date*.....

