

AGREEMENT FOR THE SUPPLY OF ONLINE IT TRAINING SERVICES

AWARD LETTER

For the attention of:	
Supplier name:	IT Training Zone Ltd, T/A ITSM Zone
Registered company number:	6332305
Supplier address:	Triune Court, Monks Cross Drive, Huntington, York, YO32 9GZ
By email to email address:	
Your reference:	
Our reference:	C35326
Award of agreement for the supply of:	Online IT Training Services
Customer:	Health and Social Care Information Centre (known as NHS Digital) of 7 & 8 Wellington Place, Leeds, LS1 4AP

Following evaluation of the tender/proposal submitted by you for the supply of Services to the Health and Social Care Information Centre (known as NHS Digital), we are pleased to confirm that we wish to award this contract to you.

This Award Letter and its Annex(es) set out the terms of the Agreement between the Health and Social Care Information Centre (known as NHS Digital) as the 'Customer' and the Supplier for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions set out in Annex 1 to this Award Letter (the "**Conditions**"). In the event of any conflict between this Award Letter, the Conditions and the Annexes the following order of precedence shall apply:

- 1) Award Letter;
- 2) Conditions;
- 3) Annex 5;
- 4) Annex 2;
- 5) Annex 3; and
- 6) Annex 4.

Please do not attempt to attach any Supplier terms and conditions or amend this Agreement as these will not be accepted by the Customer and may delay processing of the Agreement.

For the purposes of the Agreement, the Customer and the Supplier agree as follows:

- 1) The Services shall be performed at:

Address:	Online Platform
Contact telephone number:	

- 2) The Specification and Charges for the Services to be Delivered shall be as set out in Annexes 2 and 3 respectively.

- 3) The Term shall be the period from the start date to the Expiry Date as follows, and the following Extension Period(s) shall be applicable:

Start date	08.10.2021
Expiry Date	07.10.2023
Extension Period(s)	1 x 12 months

- 4) The details and addresses for communications and service of notices on the Parties are:

Customer	Health and Social Care Information Centre (known as NHS Digital)
Named contact	
Title	
Address	7 & 8 Wellington Place, Leeds, LS1 4AP
Email address	NHSDcommercial@nhs.net
Supplier	IT Training Zone Ltd, T/A ITSM Zone
Named contact	
Title	
Address	Triune Court, Monks Cross Drive, Huntingdon, York, YO32 9GZ
Email address	

- 5) The following persons are Key Personnel for the purposes of the Agreement:

Name	Title

- 6) Processing of Personal Data by the Supplier for and on behalf of the Customer is occurring pursuant to this Agreement:

Yes

In the event that the answer is yes, or if this becomes the case during the term of this Agreement, the Parties shall complete the table below and clauses 12.1 to 12.16 shall apply in respect of such Processing.

The table below sets out the agreed description of the Processing being undertaken in connection with the exercise of the Parties' rights and obligations under the Agreement. The Supplier shall comply with any further written instructions with respect to Processing given by the Customer and any such further instructions shall be incorporated into this table:

Description	Details
Identity of each Independent Controller	<p>The Parties acknowledge that for the purposes of the Data Protection Laws, the Customer and the Supplier are each Independent Controllers in accordance with clause 12.</p> <p>NHS Digital is an Independent Controller. The legal basis for the processing and sharing of the data is for access to various training courses i.e. signing up to the training platform necessary for the performance of a contract to which the data subject is party and for legitimate interest.</p> <p>ITSM Zone is an independent controller. The legal basis for this processing is for accessing the various training courses i.e. signing up to the training platform necessary for the performance of a contract to which the data subject is party and for legitimate interest.</p> <p>The parties have jointly agreed the wording of the consent model and methodology as it relates to processing (collection, analysis or disclosure) of personal data.</p>
Subject matter of the Data to be shared with NHS Digital	Data is provided by NHS Digital staff. Staff will access the platform via an intranet link or a link in an email. Users will use their work email and/or name to set up or login to their account. ITSM Zone will be receiving data to enable it process the access to the training platform for the required courses, the data is personal only; no special category data is collected.
Duration of the Processing	<p>Commence Processing the Personal Data from the Start Date: 08.10.2021 as required in order to provide the Services.</p> <p>Unless expressly agreed otherwise, cease Processing the Personal Data immediately upon the termination or expiry of the Agreement; 07.10.2024 or, if sooner, the Service to which it relates.</p>
Nature and purposes of Processing	<p>Data is provided by NHS Digital staff. Staff will access the platform via an intranet link or a link in an email. Users will use their work email and/or name to set up or login to their account. The data is processed and held by the supplier. Data is personal only; no special category data is collected.</p> <p>Data subjects are workers at NHS Digital. No vulnerable groups are included.</p> <p>Data subjects are either required to participate as part of their contract of employment or have requested access to the training platform. There are no concerns about security flaws.</p>
Type of Personal Data being Processed	Name, Email Address, Online Identifier e.g. IP Address and Website Cookies
Categories of Data Subjects	Data subjects are workers at NHS Digital. No vulnerable groups are included.

	Data subjects are either required to participate as part of their contract of employment or have requested access to the training platform.
Detail of what happens to the Data upon expiry or termination	ITSM Zone will delete or return any NHS Digital data on request or at the termination/expiration of the agreement between the two parties. However, ITSM Zone will retain Official exam results for a period of 7 years.
Plan for return of the data once the Processing is complete unless requirement under union or member state law to preserve that type of data	ITSM Zone will delete or return any NHS Digital data on request or at the termination/expiration of the agreement between the two parties. However, ITSM Zone will retain Official exam results for a period of 7 years.
NHS Digital Data Protection Officer	<p><i>NHS Digital:</i> Nhsdigital.dpo@nhs.net <i>Address:</i> 7-8 Wellington Place, Leeds, West Yorkshire, LS1 4AP <i>Name:</i> [REDACTED]</p> <p><i>ITSM Zone:</i> Support@itsm.zone <i>Address:</i> Triune Court, Monks Cross Drive, York YO32 9GZ, Unit <i>Name:</i> [REDACTED]</p>
Data Protection Officer of Supplier	<p>[REDACTED] <i>Email:</i> [REDACTED]</p>
Organisation Location of data	<p><i>Organisation name:</i> NHS Digital <i>Process Location:</i> United Kingdom <i>Storage Location:</i> United Kingdom</p> <p><i>Organisation name:</i> ITSM zone <i>Processing Location:</i> Malta, Skopje the Capital of North Macedonia and United Kingdom <i>Storage Location:</i> Malta, Skopje the Capital of North Macedonia and United Kingdom</p>

- 7) The Liability Cap shall be [a sum equal to 125% of the Charges paid or payable under the Agreement to the Supplier]
- 8) For the purposes of the Agreement the following Customer policies apply:

Staff Vetting Procedures
Data security requirements

Equality and diversity policy
Environmental policy
CSR Policies

- 9) The Supplier shall be required to ensure that any person potentially to be employed in the supply of the Services has undertaken a Disclosure and Barring Service check:

No

If 'Yes' the Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Agreement, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a **"Relevant Conviction"**), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the supply of the Services.

- 10) The Supplier must be in Receipt of a valid Purchase Order Number before submitting an invoice. All invoices should be sent, quoting that number to the address given on the purchase order. To avoid delay in payment it is important that the invoice is compliant and that it includes an item number (if applicable) and the details (name and telephone number) of the Customer contact. Non-compliant invoices will be sent back to the Supplier, which may lead to a delay in payment.

Any queries regarding outstanding payments should be directed to NHS Digital's Accounts Payable section by email at financialaccounts@nhs.net.

Invoices should clearly quote the purchase order number, be addressed to NHS Digital, T56 Payables A125, Phoenix House, Topcliffe Lane, Wakefield, WF3 1WE and be sent as a PDF attachment by email to the following email address; sbs.apinvoicing@nhs.net (one invoice per PDF) and emails must not exceed 10Mb and quote, 'T56 Invoice Scanning' in subject line or alternatively invoices can be sent via post to the above address.

Please execute and return to NHS Digital a copy of this Agreement within 7 days of receipt. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this Agreement.

Please direct all queries to the Customer contact. We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful supply of the Services.

The individuals set out below shall execute this Agreement, on behalf of the Customer and the Supplier, either using a manuscript signature or an electronic signature. A manuscript signature shall be placed in the execution block below, an electronic signature shall be evidenced in an execution block to be attached as the final page of this Agreement:

Name of individual signing:		
Title:		
Email:		
Signatories	Supplier Signature	Buyer Signature
Signature		
Date	Date: 11/10/2021	Date: 12 october 2021

Annex 1 Part A: Terms and Conditions of Agreement for Services

1. Interpretation

1.1. In these terms and conditions:

Agreement	means the contract between (i) the Customer and (ii) the Supplier comprising the Award Letter, these Conditions and Annexes 2 and 3;
Award Letter	means the letter from the Customer to the Supplier printed above this Annex 1 (Terms and Conditions of Agreement for Services);
Background IP	means any Intellectual Property Rights owned by or licensed to a Party that are not Foreground IP;
Central Government Body	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none">a) Government Department;b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);c) Non-Ministerial Department; ord) Executive Agency; and <p>to the extent not included in the above, the Department for Health and Social Care, NHS England and NHSX;</p>
Charges	means the charges for the Services as specified in the Award Letter and set out in Annex 3;
Conditions	means as defined in the Award Letter;
Contracting Authority	means as defined in the Public Contracts Regulations 2015;
Confidential Information	<p>means any and all information of a technical, commercial, financial or sensitive nature (including without limitation data, know-how, formulae, processes, designs, photographs, audio or videotape, CD ROMs, drawings, specifications, samples, programmes, materials, records, business plans, consumer research, analysis or experience) in whatever medium which is disclosed by or on behalf of either Party ("Discloser") to the other Party or to any person on behalf of that other Party ("Recipient") orally, pictorially, electronically, in writing, by demonstration, by viewing in machine readable form, or by any other means. For the avoidance of doubt the Supplier's "Confidential Information" shall include information of a commercial, financial or sensitive nature that is disclosed, marked or stated to be 'confidential' by the Supplier or on the Supplier's behalf to the Customer or to any person on the Customer's behalf as part of the Supplier's involvement in the delivery of the Services. Customer "Confidential Information" shall include the information set out within any documents issued by the Customer or on the Customer's behalf and marked or stated to be 'confidential', known by the Recipient to be confidential, or which ought reasonably to be considered by the Recipient to be confidential (including any data referred or attached thereto). Confidential Information shall not include information that: (i) was known by</p>

	the Recipient without restriction as to use or disclosure prior to receiving such information from the Discloser; (ii) has become generally known or available to the public through no act or omission on the part of the Recipient; (iii) is rightfully acquired by the Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the Recipient without use of the Confidential Information of the Discloser;
Control	means the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
Controller or Data Controller	has the meaning given to it in the Data Protection Laws;
CSR Policies	means the Customer's policies, including, without limitation, anti-bribery and corruption, health and safety, modern slavery, the environmental and sustainable development, equality and diversity, and any similar policy notified to the Supplier by the Customer from time to time, and "CSR Policy" shall mean any one of them;
CSR Laws	means Laws relating to corporate social responsibility issues (e.g. anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity), including but not limited to the Modern Slavery Act 2015, the Public Services (Social Value) Act 2012, the Public Contracts Regulations 2015 and Article 6 of the Energy Efficiency Directive 2012/27/EU, from time to time in force;
Customer	means the Health and Social Care Information Centre (known as NHS Digital);
Customer Data	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer Confidential Information, and which: <ul style="list-style-type: none"> i) are supplied to the Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or iii) any Personal Data for which the Customer is the Controller;
Data Protection Laws	means (i) the UK GDPR, the LED and any applicable Laws implementing them as amended from time to time and any data protection laws substantially amending, replacing or superseding the GDPR following the United Kingdom's exit from the European Union, or, and to the extent applicable, the data protection or privacy laws of any country, (ii) the DPA 2018 (iii) all applicable Law concerning privacy, confidentiality or the Processing of Personal Data including, but not limited to, the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations 2003;

Data Protection Impact Assessment	an assessment by the Customer of the impact of the envisaged processing on the protection of Personal Data;
Data Protection Officer	shall take the meaning given in the UK GDPR as supplemented by the DPA 2018;
Data Subject	has the meaning given to it in the Data Protection Laws;
Data Subject Access Request	means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data;
Deliverables	means anything, including any and all works or materials, created or developed by or on behalf of the Supplier pursuant to the terms of this Agreement or otherwise arising out of or in connection with the provision of the Services;
Dispute Notice	means as defined in clause 20.1;
DPA 2018	means the Data Protection Act 2018;
DSP Toolkit	means the data security and protection toolkit, an online self-assessment tool that allows organisations to measure their performance against the National Data Guardian's 10 data security standards and supports key requirements of the GDPR, which can be accessed from https://www.dsptoolkit.nhs.uk/ , as may be amended or replaced by the Customer or the Department of Health and Social Care from time to time;
EIRs	means the Environmental Information Regulations 2004 (SI 2004/3391);
Expiry Date	means the date for expiry of the Agreement as set out in the Award Letter;
Extension Period	means the period, if any, as specified in the Award Letter, by which the Term may be extended by the Customer (not to exceed 12 months in total);
FOIA	means the Freedom of Information Act 2000;
Force Majeure Event	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding for the avoidance of doubt i) any industrial dispute relating to the Supplier or Supplier Staff or any other failure in the Supplier's or a Sub-contractor's supply chain; ii) an epidemic or pandemic and iii) the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;
Foreground IP	means any Intellectual Property Rights in the Deliverables;
Good Industry Practice	shall mean in relation to any undertaking and any circumstances and in particular the provision of services to UK Government bodies or organisation of similar standing, the exercise of that degree of professionalism, skill, diligence, prudence, care,

	efficiency, timeliness, judgement and foresight which would reasonably and ordinarily be expected from a leading and expert internationally recognised company engaged in the same type of activity under the same or similar circumstance seeking to comply with its contractual obligations in full and complying with applicable Laws;
Information	has the meaning given under section 84 of the FOIA;
Intellectual Property Rights	means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;
Key Personnel	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
Laws	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply. For the avoidance of doubt, this shall include any Laws arising out of or in connection with any withdrawal of the United Kingdom from the European Union;
LED	means the Law Enforcement Directive (Directive (EU) 2016/680) as implemented in the UK by Part 3 of the DPA 2018;
Liability Cap	means the aggregate liability of the Supplier which shall not exceed the greater of: i) a sum equal to 125% of the Charges paid or payable under the Agreement to the Supplier; or ii) the value specified in the Award Letter;
NIS Regulations	means The Network and Information Systems Regulations 2018 and any guidelines, guidance notes, codes of practice and codes of conduct issued from time to time by a competent authority;
Party	means the Supplier or the Customer (as appropriate) and "Parties" shall mean both of them;
Personal Data	has the meaning given to it in the Data Protection Laws, and applies to Personal Data which is Processed by the Supplier or any Sub-contractor on behalf of the Customer or a Central Government Body pursuant to or in connection with this Agreement;
Personal Data Breach	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;
Process	has the meaning given to it in the Data Protection Laws, and "Processed" and "Processing" shall be construed accordingly;

Processor or Data Processor	has the meaning given to it in the Data Protection Laws;
Purchase Order Number	means the Customer's unique number relating to the supply of the Services;
Receipt	means the physical or electronic arrival of the invoice at the address specified above under the heading "Payment" or at any other address given by the Customer to the Supplier for the submission of invoices from time to time;
Request for Information	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
Restricted Country	means any country which is not (i) a member of the European Economic Area; (ii) the United Kingdom; (iii) deemed adequate by the European Commission pursuant to article 25(6) of Directive 95/46/EC or article 45(3) of the General Data Protection Regulation;
Services	means the services to be supplied by the Supplier to the Customer under the Agreement as set out in the Specification;
Specification	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter and Annex 2;
Staff	means all persons employed or engaged by a Party to perform its obligations under this Agreement, including any contractors and subcontractors and persons employed or engaged by such contractor or subcontractors;
Staff Vetting Procedures	means vetting procedures that accord with Good Industry Practice and, where specified in the Award Letter or otherwise requested by the Customer, the Customer's procedures for the vetting of personnel as provided to the Supplier from time to time, which shall always include but not be limited to a check through the Disclosure and Barring Service (DBS);
Standards	means any standards reasonably applicable given the Supplier's expertise and the Services provided, which shall always include as a minimum the DSP Toolkit or any replacement of the same;
Standard Contractual Clauses	means the standard contractual clauses for the transfer of Personal Data to Processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the European Commission;
Sub-contract	means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

Sub-contractor	means any third party with whom: a) the Supplier enters into a Sub-contract; or b) a third party under limb (a) above enters into a Sub-contract, or the servants or agents of that third party;
Sub-Processor	means any third party appointed to Process Personal Data on behalf of the Processor related to this agreement;
Supervisory Body	Means any statutory or other body having authority to issue guidance, standards, or recommendations with which a party and/or its personnel must comply, or to which it must have regard including: (a) CQC (b) NHS Improvement (c) NHS England (d) The Department of Health (e) The National Institute for Health and Care Excellence (f) Healthwatch England and Local Healthwatch (g) United Kingdom Health Security Agency (h) The General Pharmaceutical Council (i) The Healthcare Safety Investigation Branch (j) Information Commissioner's Office
Supplier	means the person named as Supplier in the Award Letter;
Term	means as defined in clause 4.1;
Transparency Information	means as defined in clause 13.1;
Transparency Report	means as defined in clause 13.2;
UK GDPR	means retained Regulation (EU) 2016/679 ("GDPR") as incorporated into the United Kingdom's domestic law by the operation of section 3 of the EU (Withdrawal) Act 2018 (and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019);
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
Working Day	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

- 1.2. In this Agreement, unless the context otherwise requires:
- 1.2.1. references to numbered clauses are references to the relevant clause in these Conditions;
 - 1.2.2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
 - 1.2.3. the headings to the clauses of this Agreement are for information only and do not affect the interpretation of the Agreement;
 - 1.2.4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.5. the word ‘including’ shall be understood as meaning ‘including without limitation’.

2. Basis of Agreement

- 2.1. The return or submission by the Supplier of a validly executed Agreement constitutes an offer by the Supplier to provide the Services subject to and in accordance with this Agreement.
- 2.2. The offer detailed in clause 2.1 shall be deemed to be accepted by the Customer on valid execution by the Customer of the Agreement.

3. Supply of Services

- 3.1. In consideration of the Customer’s agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with this Agreement.
- 3.2. In supplying the Services, the Supplier shall:
 - 3.2.1. co-operate with the Customer in all matters relating to the Services and comply with all the Customer’s instructions;
 - 3.2.2. perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Supplier’s industry, profession or trade;
 - 3.2.3. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Agreement;
 - 3.2.4. ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 3.2.5. comply with all applicable Standards, Laws and guidance;
 - 3.2.6. provide all equipment, tools and vehicles and other items as are required to provide the Services; and
 - 3.2.7. perform the Services promptly and in any event within any time limits as may be set out in the Agreement.
- 3.3. The Customer may by written notice to the Supplier at any time request a variation to the Specification of the Services. In the event that the Supplier agrees to any variation to the Specification of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

4. Term

- 4.1. The Agreement shall take effect on the date specified in Award Letter and shall expire on the later of:
 - 4.1.1. the Expiry Date; or
 - 4.1.2. the end date of any Extension Period applicable in accordance with clause 4.2; subject to any early termination in accordance with this Agreement (the “**Term**”).
- 4.2. The Customer may, if specified in the Award Letter, extend the Term of the Agreement for one or more Extension Periods (up to a maximum Term of 36 months) by giving not less than 10 Working Days’ notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5. Charges, Payment and Recovery of Sums Due

- 5.1. The Charges for the Services shall be as set out in Annex 3 and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 5.2. The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.3. In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after Receipt of a valid and undisputed invoice which includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.4. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the Receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.5. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement in accordance with clause 17.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
- 5.6. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6. Premises and Equipment

- 6.1. If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services, such access to be non-exclusive and revocable. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2. If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3. Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with provision of Services shall be provided without acceptance by the Customer of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of provision of Services to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.

- 6.4. If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.5. The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.6. Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.7. Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.8. The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.
- 6.9. Unless otherwise specifically stated to the contrary in the Customer's specification of requirement, the courses will be done via the Supplier's online platform.

7. Staff and Key Personnel

- 7.1. The Supplier shall employ sufficient Staff to ensure that it complies with its obligations under this Agreement. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 7.2. The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services. The redeployment and/or replacement of any Key Personnel by the Supplier shall be subject to the prior written approval of the Customer, such approval not to be unreasonably withheld or delayed. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 7.3. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
 - 7.3.1. refuse admission to the relevant person(s) to the Customer's premises;
 - 7.3.2. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.3.3. require that the Supplier promptly replaces any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,and the Supplier shall comply with any such notice.
- 7.4. The Supplier shall:
 - 7.4.1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 7.4.2. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
 - 7.4.3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

8. Assignment and sub-contracting

- 8.1. The Supplier shall not, without the written consent of the Customer, assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though those acts and omissions were its own.
- 8.2. Where the Supplier enters into a Sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that provisions are included in such Sub-contract which:
- 8.2.1. contain at least equivalent obligations as set out in the Agreement in relation to the performance of the Services to the extent relevant to such Sub-contract;
 - 8.2.2. contain at least equivalent obligations as set out in the Agreement in respect of confidentiality, information security, data protection, Intellectual Property Rights and compliance with Laws;
 - 8.2.3. contain a prohibition on the Sub-contractor sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed);
 - 8.2.4. contain a right for the Customer to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of the Agreement; and
 - 8.2.5. require payment to be made of all sums due by the Supplier to the Sub-contractor within a specified period not exceeding 30 days from the Receipt of a valid invoice.
- 8.3. Any authority given by the Customer for the Supplier to Sub-contract any of its obligations under this Agreement shall not impose any duty on the Customer to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with the Agreement.
- 8.4. Where the Customer has consented to the placing of Sub-contracts, the Supplier shall, at the request of the Customer, send copies of each Sub-contract, to the Customer as soon as is reasonably practicable.
- 8.5. The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9. Intellectual Property Rights

- 9.1. All Foreground IP shall vest in the Customer absolutely, and the Supplier hereby assigns to the Customer, absolutely with full title guarantee (and free from all third party rights), any and all of its rights, title and interest in and to all the existing and future Foreground IP, to the fullest extent permitted by law.
- 9.2. The Supplier hereby grants the Customer a perpetual, royalty-free, irrevocable, worldwide, non-exclusive licence (with a right freely to sub-license to any third party) to use all the present and future Background IP that is owned by the Supplier and/or the use of which the Supplier is able to license, including any modifications to or derivative versions of any such Background IP, which the Customer reasonably requires in order to exercise its rights under and to take the full benefit of the Agreement including the Services provided, including, without limitation, to receive, use, re-use, adapt, modify, reproduce, exploit, produce derivative versions of, supply and/or publish (including as open source software) or deal in any other way with the Deliverables.
- 9.3. Each Party undertakes that it shall promptly execute all documents, make all applications, give all assistance and do or procure the doing of all acts and things as may be necessary or

desirable to vest all the Foreground IP in, and to register it in, the name of the Customer and/or to give full effect to the licences granted under this clause 9.

9.4. The Supplier:

9.4.1. warrants that the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Services or Deliverables by the Customer and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

9.4.2. shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including but not limited to any interest, penalties, and legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Services or Deliverables.

9.5. All Background IP is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom that Party's right to use the Background IP has derived) and nothing in this Agreement shall operate to transfer any Background IP of one Party to the other.

9.6. The Customer hereby grants to the Supplier, for the Term of this Agreement, a non-exclusive, royalty-free, non-transferable licence to use any Foreground IP or any Background IP that is owned by the Customer and/or the use of which the Customer is able to license, to the extent such use is necessary for the purpose of the Supplier performing its obligations under this Agreement and/or providing the Services and Deliverables.

9.7. The Supplier shall, unless otherwise stated in Annex 2:

9.7.1. identify any third-party licences for software or other Intellectual Property Rights which are required for the receipt and use of the Services or the Deliverables by the Customer;

9.7.2. procure that the third party owner of such software or Intellectual Property Rights grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the software and Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Customer to sub-license, transfer, novate or assign to any other Contracting Authority or to any other third party supplying goods and/or services to the Customer; and

9.7.3. pay any applicable fees for any such licence.

10. Governance and Records

10.1. The Supplier shall:

10.1.1. attend progress meetings with the Customer at the frequency and times specified by the Customer in Annex 1 Part C below and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2. submit progress reports to the Customer at the times and in the format specified by the Customer in the Transparency report in Annex 1 Part C below.

10.2. The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

- 10.3. The Supplier shall not charge the Customer for any costs incurred complying with the governance requirements of this Agreement.

11. Confidentiality

- 11.1. Subject to clause 11.2, each Party shall:
- 11.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - 11.1.2. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 11.2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
- 11.2.1. where disclosure is required by applicable law (including but not limited to FOIA and EIR) or by a court of competent jurisdiction;
 - 11.2.2. to its auditors or for the purposes of regulatory requirements;
 - 11.2.3. on a confidential basis, to its professional advisers;
 - 11.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
 - 11.2.5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
 - 11.2.6. where the receiving Party is the Customer:
 - a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
 - b) on a confidential basis to any other Central Government Body, any Contracting Authority, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
 - c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - d) in accordance with clause 13,and for the purposes of the foregoing, references to disclosure "on a confidential basis" shall mean disclosure subject to a confidentiality agreement or arrangement.
- 11.3. The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12. Protection of Personal Data and Security of Data

- 12.1. The Supplier agrees to only process the Personal Data, as further described in Paragraph 6 of the Award Letter and Annex 5, for the purposes set out in clause **Error! Reference source not found..** The parties shall not process the Personal Data in a way that is incompatible with the purposes described in clauses 12.1 to 12.3 inclusive ("**Stated Purposes**").
- 12.2. The Supplier shall not retain or process the Personal Data for longer than is necessary to carry out the Stated Purposes.
- 12.3. Notwithstanding clause 12.2, the parties shall continue to retain the Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and / or industry.

- 12.4. The parties shall both comply with the Data Protection Laws.
- 12.5. Each party shall, at the other's request, provide the party with reasonable information and assistance in relation to the production of a Data Protection Impact Assessment.
- 12.6. Each party shall provide all reasonable assistance to the other if the outcome of the Data Protection Impact Assessment leads a party to consult the Information Commissioner's Office.
- 12.7. Each party shall ensure that it processes the Personal Data fairly and lawfully.
- 12.8. The Supplier shall, in respect of their Personal Data, ensure that it provides clear and sufficient information to the Data Subjects, in accordance with the Data Protection Laws, of the purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by Article 13 of the UK GDPR including:
 - 12.8.1. If the Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfers; and
 - 12.8.2. If the Personal Data will be transferred outside the UK, that fact and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the Controller to enable the Data Subject to understand the purpose and risks of such transfer.
- 12.9. The Supplier undertakes to inform the Data Subjects, in accordance with the Data Protection Laws, of the purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by Article 14 of the UK GDPR including:
 - 12.9.1. If the Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer; and
 - 12.9.2. If the Personal Data will be transferred outside the UK pursuant to clauses 12.10 to 12.12 (inclusive) in of this agreement, that fact and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the controller to enable the Data Subject to understand the purpose and risks of such transfer.
- 12.10. For the purposes of clauses 12.10 to 12.12 inclusive, transfers of Personal Data shall mean any sharing of Personal Data by the Supplier with a third party, and shall include, but is not limited to, the following:
 - 12.10.1. Subcontracting the processing of the Personal Data;
 - 12.10.2. Granting a third-party controller access to the Personal Data.
- 12.11. If the Supplier appoints a third-party Processor to process the Personal Data it shall comply with Article 28 and Article 30 of the UK GDPR and shall remain liable to the Supplier for the acts and/or omissions of the Processor.
- 12.12. The Supplier may not transfer the Personal Data to a third party located outside the UK unless it:
 - 12.12.1. Complies with the provisions of Articles 26 of the UK GDPR (in the event the third party is a joint controller); and,
 - 12.12.2. Ensures that: (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the UK GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the UK GDPR; or (iii) one of the derogations for specific situations in Article 49 of the UK GDPR applies to the transfer.
- 12.13. The Customer shall provide the Personal Data to the Supplier by using secure methods as agreed and set out in Annex 5.
- 12.14. The parties shall each comply with their obligation to report a Personal Data breach to the appropriate Supervisory Authority and, where applicable, Data Subjects under Article 33 of the UK GDPR.

- 12.15. The parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data breach.
- 12.16. In the event of a dispute, claim or request brought by a Data Subject or the Supervisory Authority concerning the processing of the Personal Data against either or both parties, the parties may, where relevant, inform each other's Data Protection Officer about any such disputes, claims or requests, as listed in the table at paragraph 6 of the Award Form.

13. Transparency and Freedom of Information

- 13.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, and which shall be determined by the Customer, the content of this Agreement, including any changes to this Agreement agreed from time to time, (the "**Transparency Information**") is not Confidential Information.
- 13.2. Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) ("**Transparency Report**"). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 13.3. The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information, including the preparation of the Transparency Reports.
- 13.4. If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 13.5. The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 13.6. The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may publish such Information. The Supplier shall provide to the Customer within 5 Working Days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.
- 13.7. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 13.7.1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
 - 13.7.2. transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 13.7.3. provide the Customer with a copy of all Information held on behalf of the Customer which is requested in a Request for Information and which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

13.7.4. not respond directly to a Request for Information addressed to the Customer unless authorised in writing to do so by the Customer.

- 13.8. The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

14. Liability

- 14.1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 14.2. Subject always to clauses 14.4 and 14.5:
- 14.2.1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the Liability Cap; and
- 14.2.2. except in the case of claims arising under clauses 9.4 and 19.3, in no event shall either Party be liable to the other Party for any:
- a) loss of profits;
 - b) loss of business;
 - c) loss of revenue;
 - d) loss of or damage to goodwill; and/or
 - e) any indirect, special or consequential loss or damage.
- 14.3. The Customer's maximum aggregate liability under this Agreement shall in no event exceed a sum equal to 100% of the Charges paid or payable under the Agreement to the Supplier in the 12 months immediately prior to the breach giving rise to the liability.
- 14.4. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 14.4.1. death or personal injury caused by its negligence or that of its Staff;
- 14.4.2. fraud or fraudulent misrepresentation by it or that of its Staff; or
- 14.4.3. any other matter which, by law, may not be excluded or limited.
- 14.5. The Supplier's liability under the indemnities in clauses 9.4 and 19.3 shall be unlimited.
- 14.6. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to the Agreement.

15. Insurance

- 15.1. During the Term and for a period of 12 months thereafter, the Supplier shall maintain in force, and shall procure that any Sub-contractors maintain in force, with a reputable insurance company insurance sufficient to cover the liabilities that may arise under or in connection with this Agreement, and shall, on the Customer's request, produce both the insurance certificates giving details of cover and the receipts for the current year's premium in respect of each insurance.

16. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from a Force Majeure Event. Each Party shall promptly notify the other Party in writing when a Force Majeure Event causes a delay or failure in performance and when it ceases to do so. If a Force Majeure Event continues for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

17. Termination

- 17.1. The Customer may terminate the Agreement at any time by providing notice in writing to the Supplier to take effect on any date falling at least 30 days (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 17.2. Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
 - 17.2.1. (without prejudice to clause 17.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
 - 17.2.2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
 - 17.2.3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - 17.2.4. undergoes a change of Control without the prior written consent of the Customer. The Customer shall be entitled to withhold such consent if, in the reasonable opinion of the Customer, the proposed change of Control will have a material impact on the performance of the Agreement or the reputation of the Customer;
 - 17.2.5. breaches any of the provisions of clauses 7.2, 11, 12, 13 and 18; or
 - 17.2.6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.2.6) in consequence of debt in any jurisdiction.
- 17.3. The Supplier shall notify the Customer as soon as practicable of any change of Control as referred to in clause 17.2.4 or any potential such change of Control.
- 17.4. The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 17.5. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.7, 6.8, 7, 9, 10.2, 11, 12, 13, 17.6, 18.4.3, 19.3, 20 and 21.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 17.6. Upon termination or expiry of the Agreement, the Supplier shall:
 - 17.6.1. give all reasonable assistance to the Customer and any incoming supplier of the Services; and
 - 17.6.2. return all requested documents, information and data to the Customer as soon as reasonably practicable.

18. Compliance

- 18.1. The Supplier shall, and shall procure that its Sub-contractors and any person under its control, comply with all the Customer policies specified in the Award Letter.
- 18.2. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 18.3. The Supplier shall:
- 18.3.1. comply with all the Customer's health and safety measures while on the Customer's premises; and
 - 18.3.2. notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 18.4. The Supplier shall:
- 18.4.1. comply, and procure that all Staff comply with all CSR Laws;
 - 18.4.2. require its Sub-contractors and any person under its control, to comply with all CSR Laws;
 - 18.4.3. adopt, and procure that its Sub-contractors and any person under its control adopt, written corporate and social responsibility policies that set out values for relevant activity and behaviour equivalent to those set out in the CSR Policies (including, without limitation, addressing the impact on employees, clients, stakeholders, communities and the environment of the Supplier's business activities); and
 - 18.4.4. notify the Customer in the event that the Supplier's or its Sub-contractors' corporate and social responsibility policies conflict with, or do not cover the same subject matter in an equivalent level of detail as is in, the CSR Policies.
- 18.5. The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of section 182 of the Finance Act 1989.
- 18.6. The Customer may, where it deems appropriate (including but not limited to circumstances where a successor or related project involves a procurement process governed by the Public Contracts Regulations 2015), require the Supplier to put in place steps to ensure due probity including the erection of ethical walls and obligations to provide specific information. In such circumstances, the Supplier shall comply with any such measures reasonably proposed by the Customer.

19. Prevention of Fraud and Corruption

- 19.1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 19.2. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3. If the Supplier or the Staff engages in conduct prohibited by clause 19.1 or commits fraud in relation to the Agreement or any other contract with the any Contracting Authority (including the Customer) the Customer may:
- 19.3.1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any

additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

19.3.2. recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

20. Dispute Resolution

- 20.1. If there is a dispute in relation to this Agreement, the Party raising the dispute shall serve a notice on the other Party in writing ("**Dispute Notice**") setting out the details of the dispute. The Parties shall then attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 20.2. If the dispute cannot be resolved by the Parties within 30 days of the date of the Dispute Notice (being the date it was received) either Party may escalate the dispute to each of the relevant Parties' Senior Management. If such Senior Management fail to resolve the dispute within 30 days then any Party may exercise any remedy it has under applicable law. For the avoidance of doubt, neither Party shall be prevented by this Dispute Resolution process from commencing court proceedings more quickly if it is necessary to comply with a limitation period or if it is necessary to seek an urgent remedy.
- 20.3. The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to any dispute resolution process and the Supplier shall, and shall procure that the Staff shall comply fully with the requirements of this Agreement at all times.

21. General

- 21.1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 21.2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 21.3. Subject to clause 22.1, the Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 21.4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 21.5. Any waiver or relaxation, either partly or wholly of any of the terms and conditions of the Agreement, shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 21.6. The Agreement shall not 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 the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 21.7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are

cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

- 21.8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

22. Notices

- 22.1. Any notice to be given under the Agreement shall be in writing and shall include the Agreement reference and title. All notices must be served by email, and, subject to clause 22.2, may in addition be served by personal delivery or first class recorded post. All notices must be served using the addresses of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 22.2. Notices under clauses 15 (Force Majeure) and 17 (Termination) must be served by email and personal delivery or recorded delivery in the manner set out in clause 22.1.
- 22.3. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

23. Security of Supplier Staff

- 23.1. Supplier Staff shall be subject to pre-employment checks that include, as a minimum: verification of identity, employment history, unspent criminal convictions and right to work, as detailed in the HMG Baseline Personnel Security Standard (<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>), as may be amended or replaced by the Government from time to time.
- 23.2. The Supplier shall agree on a case by case basis which Supplier Staff roles which require specific government National Security Vetting clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.
- 23.3. The Supplier shall prevent Supplier Staff who have not yet received or are unable to obtain the security clearances required by this clause from accessing systems which store, process, or are used to manage Customer Data, or from accessing Customer premises, except where agreed with the Customer in writing.
- 23.4. All Supplier Staff that have the ability to access Customer Data or systems holding Customer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Customer in writing, this training must be undertaken annually.
- 23.5. Where Supplier Staff are granted the ability to access Customer Data or systems holding Customer Data, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need such access or leave the organisation, their access rights shall be revoked within one (1) Working Day.

24. Publicity and Branding

- 24.1. The Supplier shall not:
- 24.1.1. make any press announcements or publicise this Agreement or its contents in any way;
or
- 24.1.2. use the Customer's name or brand in any promotion or marketing or announcement of orders,
without the prior written consent of the Customer.

- 24.2. Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

25. Governing Law and Jurisdiction

- 25.1. The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts.

26. Execution and Counterparts

- 26.1. This Agreement may be executed in any number of counterparts (including by electronic transmission), each of which when executed shall constitute an original but all counterparts together shall constitute one and the same instrument.
- 26.2. Execution of this Agreement may be carried out in accordance with the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (SI 2016/696) and the Electronic Communications Act 2000. In the event each Party agrees to sign this Agreement by electronic signature (whatever form the electronic signature takes) it is confirmed that this method of signature is as conclusive of each Party's intention to be bound by this Agreement as if signed by each Party's manuscript signature. In such situation, this Agreement shall be formed on the date on which both Parties have electronically signed the Agreement as recorded in the Customer's electronic contract management system.

Annex 1 Part B: Service Levels Agreement

Service Level Agreement – Online IT Training Service							
	SLA ref	Service Level Performance Criterion	Timescales	Service Level Target	Service Level Performance Measure	Service Level Threshold	Pass/Fail
Customer Service	SLA1	Consistent functionality of Customer Service Support (telephony, emails, course booking service)	Customer service support is contractually required to be operational between the hours of 08:30 and 17:30 on any working weekday (excluding bank holidays).	95%	At least 95% at all times	Less than 95%	
	SLA2	Tutor support enquiry	Tutor support enquiry service is contractually required to be operational and answered within 24hrs of receipt.	95%	At least 95% at all times	Less than 95%	
	SLA3	Resolution of telephony enquiries	within 24 hours (working hours) of receipt	95%	At least 95% at all times	Less than 95%	
	SLA4		within 2 working days of receipt	100%	100% at all times	Less than 100%	
	SLA5	Resolution of email enquiries	within 24 hours (working hours) of receipt	90%	At least 90% at all times	Less than 90%	
	SLA6		within 3 working days of receipt	100%	100% at all times	Less than 100%	
	SLA7	Acknowledgement of complaints	within 24 hours (working hours) of receipt	100%	100% at all times	Less than 100%	
	SLA8	Resolution of complaints	within 5 working days of receipt	100%	100% at all times	Less than 100%	

Booking	SLA9	Acknowledgement of booking	within 24 hours (working hours) of receipt	100%	100% at all times	Less than 100%	
	SLA10	Course Access Instructions sent to delegates	2 working days of expression of interest	100%	100% at all times	Less than 100%	
	SLA11	Acknowledgement of cancellation and re-assignment of course to individual and line manager	within 2 working days of receipt	100%	100% at all times	Less than 100%	
Course Design & Delivery	SLA12	Access to all required course materials are available on the day learner's log-in details is given	All materials must be available to the learner on the day learner's login details is given	100%	100% at all times	Less than 100%	
Quality	SLA13	Cumulative delegate examination pass rate show that course content was of good quality overall and effectiveness of the method of delivery objectives / outcomes were met	Monthly: Concerning exams that were held between the start of the first calendar day of the month to the end of the last calendar day of the month. SLA will report on the previous month (i.e. the SLA for February will be assessing events in January).	80% or A mean average of 8 out of 10	At least 80% at all times or A mean average of at least 8 out of 10 at all times	Less than 80% or Less than a mean average of 8 out of 10	
Performance Management	SLA14	Performance Management Information shall be complete and delivered on time to the Authority with evidence that data has been quality assured and MI is as accurate as possible.	Monthly	at least 99% accuracy/completeness of all data	At least 99% at all times	less than 99%	
	SLA15		5th working day of the following month	100% available by 5th working day of the following month	100% at all times	less than 100%	
	SLA16	Allow access to management information for individual departments	Within 48 hours of receipt of request	95%	At least 95% at all times	Less than 95%	
Invoicing	SLA17	Number of credit notes raised by supplier to identify invoice error rate	Monthly: Concerning invoices that were raised between the start of the first calendar day of the month to the end of the last calendar day of the month.	95%	At least 95% accuracy of Supplier invoices to the Authority	Less than 95%	
Contract Management	SLA18	Operational Efficiency, Price Savings. The Supplier to deliver against the Supplier Action Plan to derive	Mutually agreed action plans to be delivered and achieved by agreed date	95%	At least 95% at all times	Less than 95%	

		further cost savings over the Contract Period via continuous improvement and innovation					
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Annex 1 Part C: Performance Monitoring and List of Transparency Report

PRINCIPAL POINTS

- 1.1 Part C to this Annex 1 provides the methodology for monitoring the provision of the Services:
- 1.1.1 to ensure that the Supplier is complying with the Service Levels; and
 - 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services ("**Performance Monitoring System**").
- 1.2 Within twenty (20) Working Days of the Contract Commencement Date the Supplier shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

REPORTING OF SERVICE FAILURES

- 2.1 The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Customer in accordance with the processes agreed in paragraph 1.2 above.

PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 3.1 The Supplier shall provide the Customer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.2 of Part B of this Contract above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
- 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 3.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 3.1.3 any Critical Service Level Failures and details in relation thereto;
 - 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 3.1.5 such other details as the Customer may reasonably require from time to time.
- 3.2 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
- 3.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
 - 3.2.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
 - 3.2.3 be attended by the Supplier's Representative and the Customer's Representative; and

3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Customer's Representative at each meeting.

3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.

The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier for any specified Service Period.

ANNEX 1 PART C: LIST OF TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
Performance	Multiple raw data and visual reports available	E-mail	Monthly
Contract Charges	Multiple raw data and visual reports available	E-mail	Monthly
Technical	Multiple raw data and visual reports available	E-mail	Monthly
Performance management	Multiple raw data and visual reports available	E-mail	Monthly

Annex 1 Part D: Additional Clause

INTRODUCTION

1.1 This Annex 1 Part D specifies the range of Additional Clauses that may be requested in the contract and if requested in the contract, shall apply to this Contract.

2.0 Additional Clauses: General

2.1 Extension of Training Course Access

2.1.1 The Supplier shall give the Customer free extension of 7 days for any learner who has not completed the training within the set timeframe, should additional time be needed, this can be purchased in blocks of 30 days for Foundation level courses, or 30/90/180 for intermediate levels or for programmes.

2.2 Re-assignment of training course access

2.2.1 The Supplier shall allow the Customer to re-assign unused, un-accessed training courses to another learner provided the Customer inform the Supplier before the end of the live access period.

2.3 Pricing for the duration of the Contract

2.3.1 The Supplier has issued the Customer with a fixed set of pricing on all the required training courses and this will remain in place for the duration of the contract.

2.4 Examinations

2.4.1 Exam vouchers may be requested any time up to twelve (12) month's after the date of the delivery confirmation, this may be extended in line with course or program extensions, in which case exam vouchers can be requested at any point while the learner's training access is still live.

2.4.2 Once issued, the exam voucher is valid for a period of six (6) months from the voucher delivery confirmation date, or the date provided on the voucher, whichever one comes first.

2.4.3 The Customer is responsible for meeting the costs of any exam re-sits and the Supplier is not responsible for the costs of re-sits.

2.4.4 The Customer's learners must agree to uphold the official examination rules and regulations as set out by the examination Institute and the required examination conditions.

2.4.5 The Customer's learners must supply a valid course completion certificate when requesting an examination and this will be issued by the Supplier at the completion of each course.

2.4.6 Should a student request an exam voucher, then not wish to proceed with the exam, the voucher can be cancelled and a credit applied to the account as long as the Supplier is notified within 2 weeks of issue date. Alternatively, vouchers can be reassigned to an alternative candidate, who will have the remaining validity that is in accordance with the initial issue date.

Annex 2 – Specification

REQUIREMENT SPECIFICATION TEMPLATE: GENERAL GOODS OR SERVICES

The following template is a useful basis for drafting requirement specifications for general goods and services. It should be amended to suit your specific requirements.

To try and identify some changes that might occur during the lifetime of a contract, Appendix 1 lists some questions that you may wish to consider.

CONTENTS

- 1. INTRODUCTION**
- 2. BACKGROUND**
- 3. CONTRACT SCOPE**
- 4. DETAILED REQUIREMENTS**
- 5. SERVICE LEVELS**
- 6. CONTRACT MANAGEMENT**
- 7. SUSTAINABILITY**
- 8. GDPR & DPIA**

9. CONTRACT PERIOD

Appendix 1 – Changes that can occur during the lifetime of a contract

1. Introduction

NHS Digital (an Executive Non-Departmental Public Body for the Department of Health) is the national information, data and IT system provider to the Health and Social Care system in England. The Authority employs more than 2,700 people. Its role is to improve health and social care in England by putting technology and information to work in the interests of citizens.

This includes:

- transforming primary, community and social care to keep people living more independent, healthier lives for longer in their community
- improving Health and Social Care through better use of digital, data and technology

It builds and manages the technology infrastructure, digital systems, services and standards that Health and Social Care professionals depend on to deliver good care. The Authority gathers and disseminates data that (i) is used by researchers to discover new treatments; and (ii) helps providers and commissioners improve care quality.

2. Background

There is a requirement for the provision of ongoing online training required for essential knowledge and skills within the Live Services directorate of NHS Digital.

The Live Services directorate is responsible for the secure, resilient and highly available service provision of health critical IT services underpinning the day to day activities of the NHS.

These systems include, but are not limited to those services as noted below:

- NHS Spine
- ERS
- National COVID Testing Service
- Health and Social Care Network (HSCN)
- Primary Care Services
- Secondary Care Services
- NHSmail
- Data Services across all areas of COVID data presentation
- Data Services across all areas of primary and secondary care activities
- Data Services across all areas of clinical data presentation and research

Accordingly, against this business background, online training is required across all areas of live service management and operation, in order to support a highly qualified and skilled workforce to ensure the ongoing operation of such services as noted above.

The key areas of training are as noted here:

Primary:

- ITIL V3 (Intermediates)
- ITIL4 (Foundation),
- ITIL4 (Specialist)
- ITIL4 (MP Transition)
- DevOps
- SIAM
- VeriSM
- Business Analysis
- Cloud Computing

Secondary:

- Agile Scrum (Foundation)
- Agile Scrum (Practitioner)
- Agile Project Management (Foundation)
- Agile Project Management (Practitioner)
- Cloud Computing
- ISO/IEC 20000

3. Scope of the Contract

The scope of the contract is the provision of online training services as noted in section 2.

It is expected that flexibility will be provided within the terms of the contract to include additional and further training modules by agreement, in order that the training maintains pace with emerging technologies and working practices.

Further, it is expected that the Contractor will be proactive in the notification of new training services.

It is expected that this service will be in place for a period of 2 years plus 1 year agreed extension period, with an intended start date of 1st September 2021.

4. Detailed Requirements

In terms of detailed requirements, the expected courses to be provided are as noted, but not limited, to those areas below:

The key areas of training are as noted here:

Primary:

- ITIL V3 (Intermediates)
- ITIL4 (Foundation),
- ITIL4 (Specialist)
- ITIL4 (MP Transition)
- DevOps
- SIAM
- VeriSM
- Business Analysis
- Cloud Computing

Secondary:

- Agile Scrum (Foundation)
- Agile Scrum (Practitioner)
- Agile Project Management (Foundation)
- Agile Project Management (Practitioner)
- Cloud Computing
- ISO/IEC 20000

Additional to those courses noted above, the provision of additional tutoring facilities as required would be desirable.

Volume Requirements

The volume of training courses to be included in the scope of these requirements is [REDACTED] courses per 12 month period from the start date of the contract.

It is expected that up to [REDACTED] courses per 12 month period may be provided without additional contract charge and that volumes above this agreed limit will be covered under agreed change control measures.

Non-Functional / Operational Requirements

Hours of Service/Delivery – Hours of Service Delivery are expected to be 08:30-18:30 Monday to Friday, excluding Bank Holidays.

However, considering the online nature of the service, it would be desirable for the training to be available on demand, to suit the training users' needs.

In terms of response to any queries and/or incidents, then there will be a Service Desk available from 09:00-17:00 Monday to Friday, excluding Bank Holidays.

Security of data – All data collected, stored or used by the Contractors will be managed in accordance with security principle ISO27001 or agreed equivalent.

Exit of Contract – At the point of completion of the contract, at end date or at the end of an agreed notice period, then all data held by the contractor will be returned to NHS Digital.

System Recovery Timescales – In the event of system loss of the training service, identified as a Severity 1 incident (a total loss of service), then it is expected that the service will be fully recovered and operational, with no loss of data within 48 hours.

5. Service Levels and Key Performance Indicators (KPIs)

Service Levels and KPI's for this service will consist of measures noted against availability and quality of training provided.

In terms of availability, due to the online nature of the courses, it is expected that 95% of course applicants will have access to the training course according to their first choice.

Upon completion of all courses, exam vouchers to be available to the Authority within a 48 hour elapsed period.

In terms of quality of training provided, it is expected that suppliers will maintain and progress a continual service improvement plan, reflecting areas of note as highlighted by the NHS Digital Live Services representatives within the monthly service review meetings as noted in Section 6 below.

6. Contract Management and Review

The approach to contract management and review will be monthly service review meetings, held between nominated representatives of NHD Service Management directorate and the Contractor for the services.

The review and performance against the services will be measured against those Service Level Measures and KPI's specified in Section 5 above.

7. Sustainability

Contractors to provide evidence of having an active sustainability plan in place, stating their targets and reductions made so far.

8. General Data Protection Regulation (GDPR) and Data Privacy Impact Assessments (DPIA)

Subject matter data will consist of subject name, contact details, including personal contact number and email address along with their role within NHS Digital. Further data will consist of details of all booking requirements and the outcome of any training and associated exam results. In terms of duration, it is expected that the data will be held for the duration of the contract.

All data is owned by NHS Digital as the nominated Data Controller for this purpose.

Following completion of the assessment form for Data Privacy Impact Assessments (DPIAs), it is assumed that a full DPIA will be required prior to the commencement of the service provision.

9. Project/Contract Period

It is expected that this service will be in place for a period of 2 years plus 1 year agreed extension period, with an intended start date of **1st September 2021**.

APPENDIX 1

CHANGES THAT CAN OCCUR DURING THE LIFETIME OF A PROJECT/CONTRACT

- 1. Duration of Contract:** Any requested additional duration to the contract will be covered within the stated one-year optional extension period of a 2 year contract plus 1 year's optional extension period.
- 2. Value and Scope of Contract:** At the request of the Authority, any additional training provision exceeding the maximum number of [REDACTED] courses within a twelve-month period, will be dealt with under agreed change control.
- 3. Change to Government Legislation:** It is expected that any change to government legislation, impacting the provision of training to NHS Digital Live Services may constitute a reason to provide notice of termination or change in scope for the contract.
- 4. Innovation, Changes to Technology and Business Methods:** It is expected that the Contractor will provide innovation and flexibility in the provision of all services and will remain current with changes to technology and associated working methods. All additions to training services will be agreed at monthly service review meetings and will form a key component to all Continual Service Improvement plans, maintained and managed by the Contractor.

Industrial Action and Lack of Continuity of Service: In the event of industrial action causing a lack of continuity of provided service, then it is expected that payment will be withheld as appropriate for the duration of the action.

Annex 3 – Supplier Response to Invitation Tender C35326

AQ1 - COURSE AVAILABILITY

ITSM Zone currently offer the following accredited courses –

ITIL V3 Service Strategy (SS)

ITIL V3 Service Design (SD)

ITIL V3 Service Transition (ST)

ITIL V3 Service Operation (SO)

ITIL V3 Continual Service Improvement (CSI)

ITIL V3 Operational Support and Analysis (OSA)

ITIL V3 Planning, Protection and Optimization (PPO)

ITIL V3 Release, Control and Validation (RCV)

ITIL V3 Service Offerings and Agreements (SOA)

ITIL V3 Managing Across the Lifecycle (MALC)

ITIL 4 Foundation

ITIL 4 Specialist Create, Deliver and Support

ITIL 4 Specialist Drive Stakeholder Value

ITIL 4 Specialist High-velocity IT

ITIL 4 Strategist Direct, Plan and Improve

ITIL 4 Managing Professional Transition

Foundation Certificate in DevOps

SIAM Foundation

VeriSM Foundation

VeriSM Essentials

VeriSM Plus

Business Analysis Foundation

Cloud Computing Foundation

Agile Scrum Foundation

Agile Project Management Foundation

ISO/IEC 20000 Foundation

RESILLIA Foundation

RESILLIA Practitioner

Business Relationship Management Professional

Certified Business Relationship Manager

OBASHI Foundation

COBIT 5 Foundation

SIAM Professional will be available Q4 of 2021

COURSE AVAILABILITY cont

ITSM Zone also offer the following non-accreditation courses

ITIL 4 Lite

Spotlight on Kanban

Spotlight on Process Improvement

All above courses are produced, maintained, and supported by ITSM Zone.

AQ2 - OVERVIEW

ITSM Zone is committed to supporting all learners by delivering a media rich, engaging and enjoyable online learning experience that will effectively prepare the student for any associated exam. Our range of courses has been developed to support ITSM professionals at all levels of their career, allowing them to learn in a format and training portal that is familiar to them.

We pride ourselves on our levels of support and include real world, experienced, qualified IT services professionals on our team.

THE COURSES

Courses are presented in a web-based training portal that can be accessed on a range of devices, including laptops, PCs, MACs, mobiles and tablets.

They are written in a way that promotes full learning and understanding. Lessons are “locked” to be opened sequentially, giving a flow to the information presented. Once students have completed a lesson, they can review as many times as needed, ensuring they understand the concepts and principles before moving on.

Lessons are short, interspaced with exercises and questions to check understanding, ensuring that it remains engaging and easy to fit around work commitments.



24/7 HELPDESK

Our dedicated team are on hand every 24/7, 365 days of the year. Regardless of when a student requires assistance, they will receive a response within a maximum of 2 hours. Students have easy access to the support team, with dedicated links to Technical and General support plus the ability to request their exam voucher all from their training portal.

TUTOR SUPPORT

Every student has access to our team of tutors. These are experienced industry professionals who have worked in IT support and who hold all relevant qualifications. Tutor support is directly available from within the student's portal and students will receive a response to their questions within a maximum of 24 hours. This will be by email, so students can refer to the answer(s) as many times as needed.

OTHER RESOURCES

ITSM Zone provides additional resources, such as "Mind Maps" and "On a Page" overviews which can be downloaded from the main site. To support a wider learning experience, we have also created a YouTube channel, with sessions focussing on industry issues, challenges and more. This can be accessed at <https://www.youtube.com/c/TheITSMCrowd>

SUPPORTING GROUP LEARNING

ITSM Zone recognises that learners often start from different positions. Students who are new to IT Services may require more time to work through course material than one who has years of experience. However, the flexible nature of ITSM Zone courses means that groups of learners can study during the same time frame, using the study trackers to plan sessions where they can discuss their learning and how to apply it in their workplace.

AQ3 – ACCREDITATIONS

ITSM Zone is recognised as an "Accredited Training Organisation" (ATO) by Peoplecert, APMG International, EXIN and BCS

We are an official AXELOS Training Provider.

Additionally, ITSM Zone are registered as an "Accredited Examination Organisation" by Peoplecert, allowing us to sell exams only to students who wish to self study.

The following courses are accredited by Peoplecert –

ITIL V3 Service Strategy

ITIL V3 Service Design

ITIL V3 Service Transition

ITIL V3 Service Operation

ITIL V3 Continual Service Improvement

ITIL V3 Operational Support & Analysis

ITIL V3 Planning, Protection & Optimization



ITIL V3 Release, Control and Validation
ITIL V3 Service Offerings and Agreements
ITIL V3 Managing Across the Lifecycle
ITIL 4 Foundation
ITIL 4 Specialist Create, Deliver and Support
ITIL 4 Specialist Drive Stakeholder Value
ITIL 4 Specialist High-velocity IT
ITIL 4 Strategist Direct, Plan and Improve
ITIL 4 Managing Professional Transition
ISO/IEC 20000 Foundation
RESILLIA Foundation
RESILLIA Practitioner
COBIT 5 Foundation

The following courses are accredited by Exin –

SIAM Foundation
VeriSM Foundation
VeriSM Essentials
VeriSM Plus
Business Analysis Foundation
Cloud Computing Foundation
Agile Scrum Foundation

The following courses are accredited by APMG International –

Business Relationship Management Professional
Certified Business Relationship Manager
OBASHI Foundation
Agile Project Management Foundation

The following course is accredited by BCS, via affiliation with the DevOps Group –

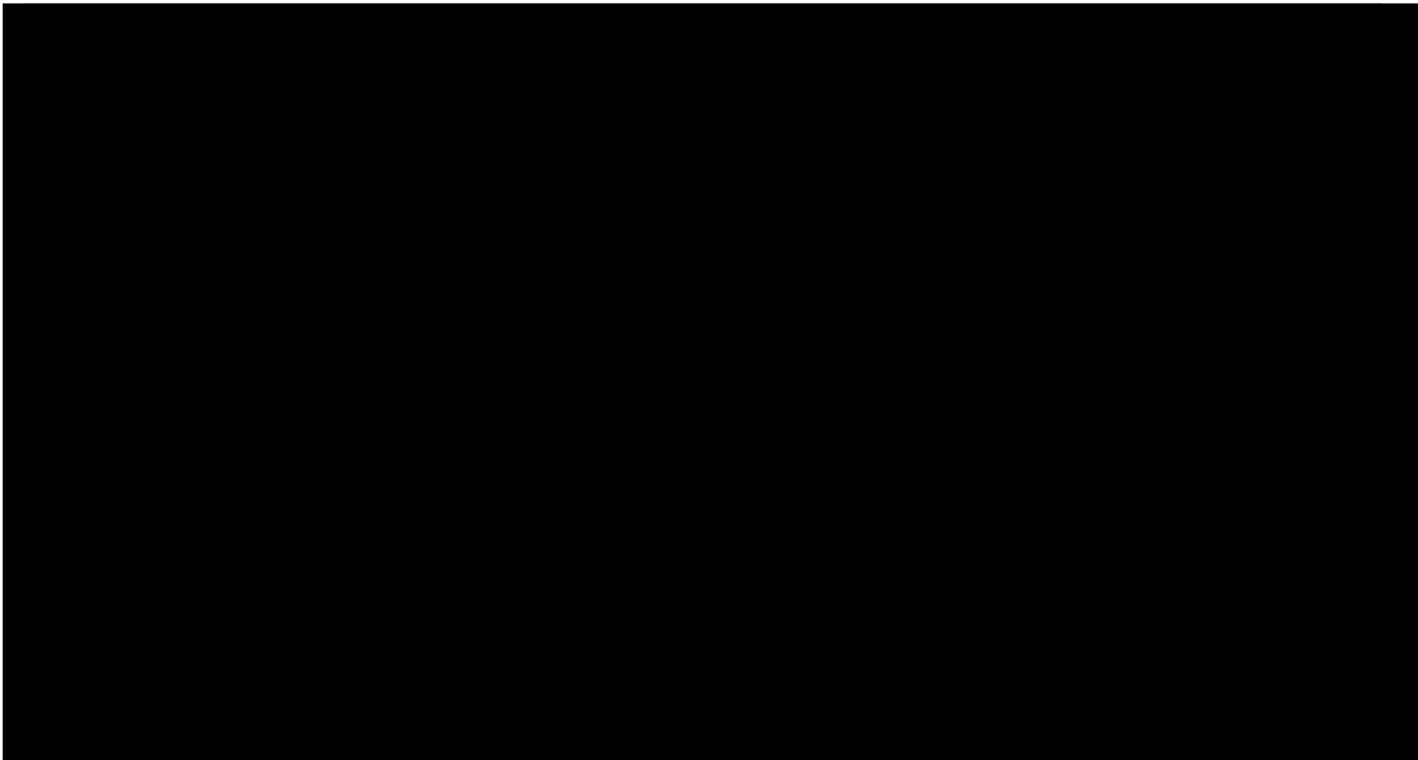
Foundation Certificate in DevOps








AQ4 – E-LEARNING PLATFORM

ITSM Zone provides customised portals for the online delivery of e-Learning courses to customers with larger scale or ongoing requirements. This allows organisations to modify elements of the portal including the branding, the domain, automated messaging, and the welcome page. Training administrators can be copied into communications with students and can pull reports to show progress.



DOWN TIME

There has been no notifiable outages or down time during the last 12 months, of any of the ITSM Zone learning portals. 



AQ5 – COURSE ACCESSIBILITY

ITSM Zone is committed to providing a flexible learning solution, that is easily accessible on any device and in any place that a student wishes to study.

ACCESSING THE COURSE(S)

ITSM Zone courses are accessed on a web-based platform, meaning that they can be studied on a variety of suitable devices, with a reliable internet connection. Students have successfully studied using a variety of browsers, versions, and devices.

Our recommendation for the optimal online training experience is a minimum of:

- PC or Laptop running at least Windows 7 or above, or alternatively a MAC computer; minimum specification of 128 MB (256MB recommended) RAM and a minimum of a 500MHz Processor.
- Minimum Screen Display Size of 15" (17" widescreen or above recommended).
- Headphones or speakers connected to your computer – to listen to video tutorials.
- A Web Browser capable of streaming HTML5 content.

A reliable Internet connection of at least 1 Mbps – to view video tutorials.

COURSE COMPOSITION

Over the last 14 years, ITSM Zone has committed to using training best practice. Our courses are built using short lesson durations that allow students to fit lessons / modules into their working day or around home life.

We accept that all learners are different and have taken an approach that should appeal to all – with a mixture of video content, downloads, questions and exercises. We provide real world examples throughout the course(s), helping learners to put their knowledge into context.

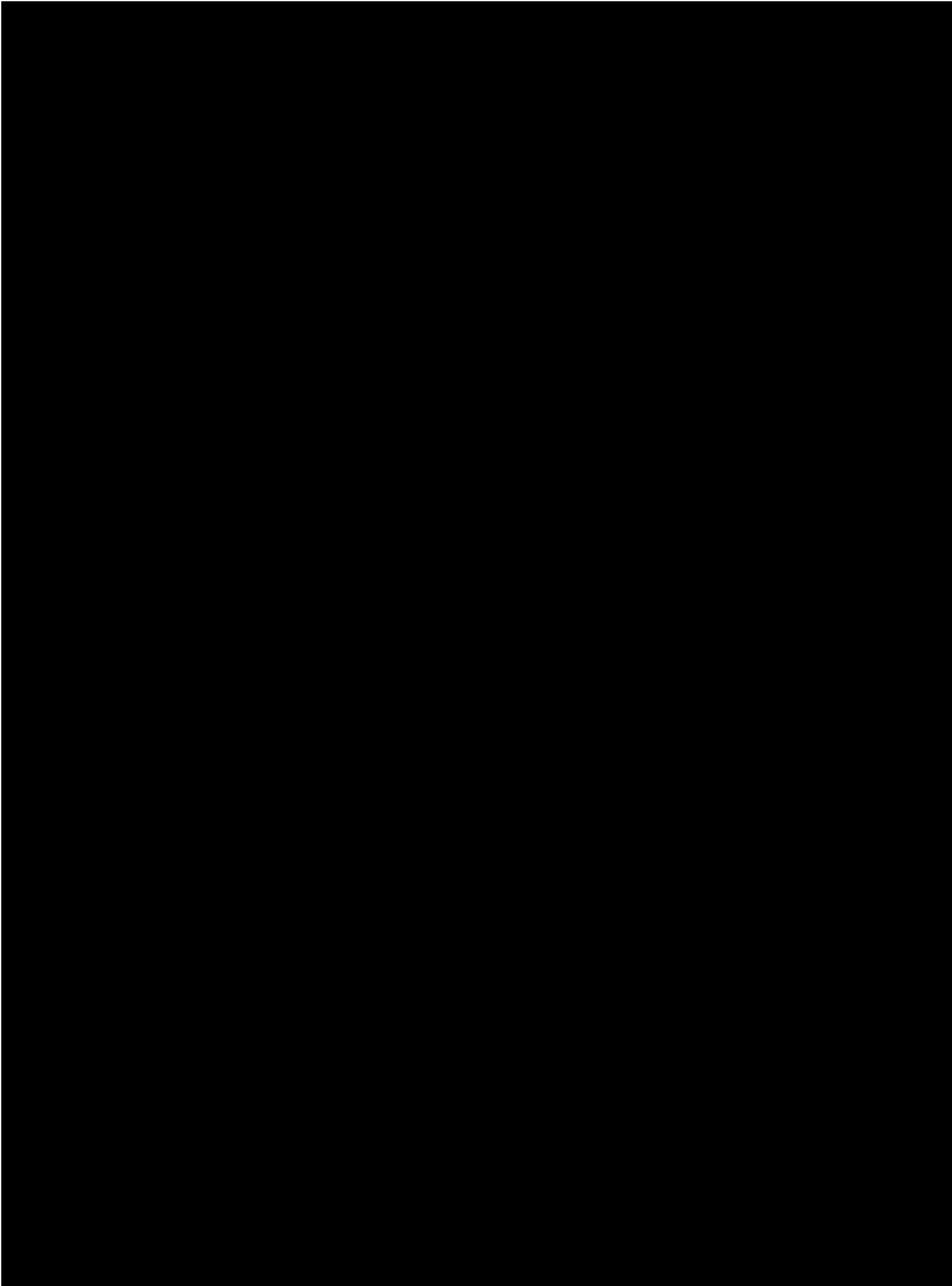
Learners have the opportunity to click for more information at pertinent points (for example for a full definition of a phrase or term) or can miss this if they are confident with the terminology being presented.

TRACKING

Students are provided with a list of modules, showing which are completed each time the course is accessed, to help them keep track of their learning.

AQ6 – COURSE FLEXIBILITY

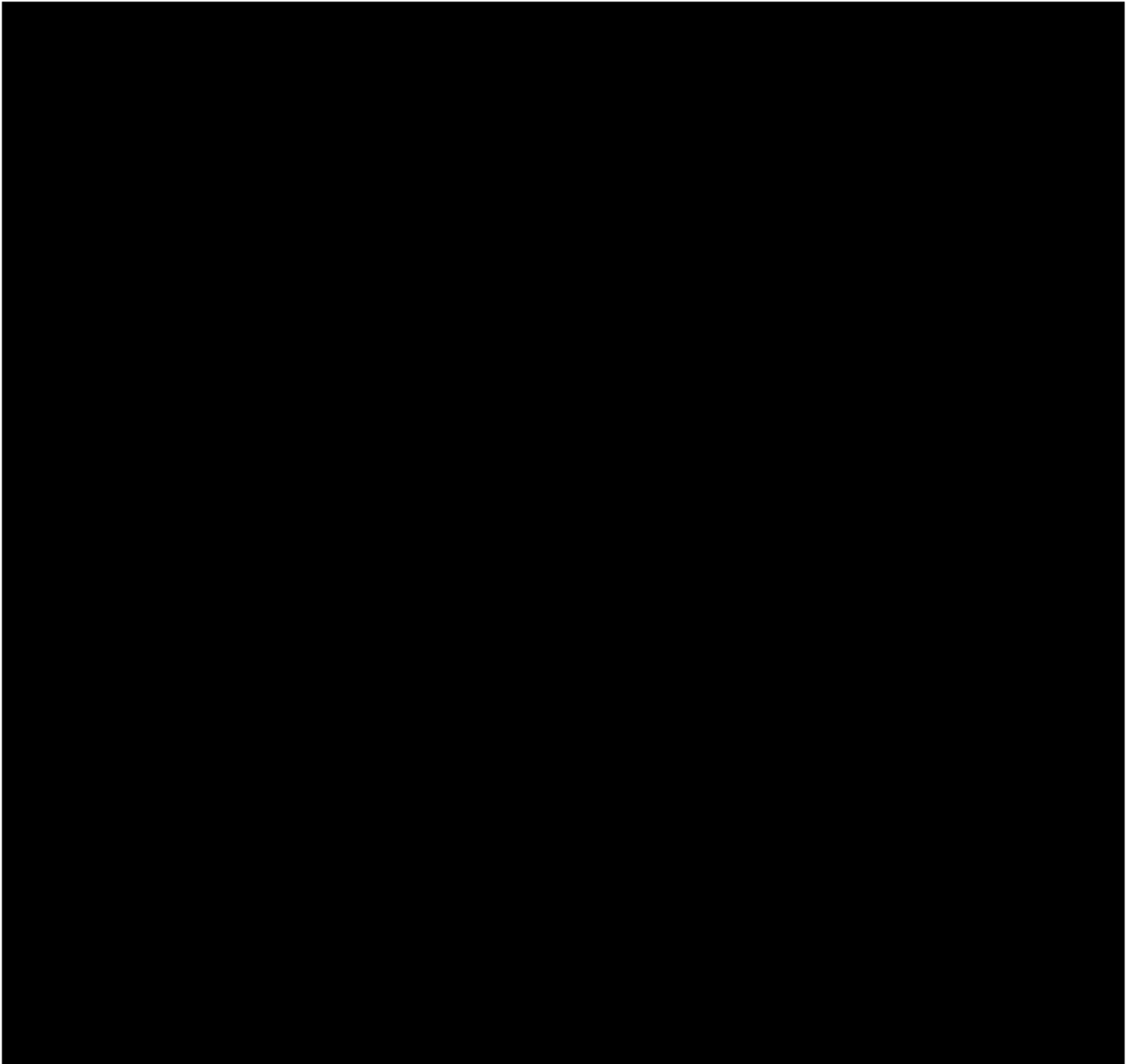
ITSM Zone is committed to providing a flexible learning solution, that is easily accessible on any device and in any place that a student wishes to study. The training is created to allow students to control the times when they study.

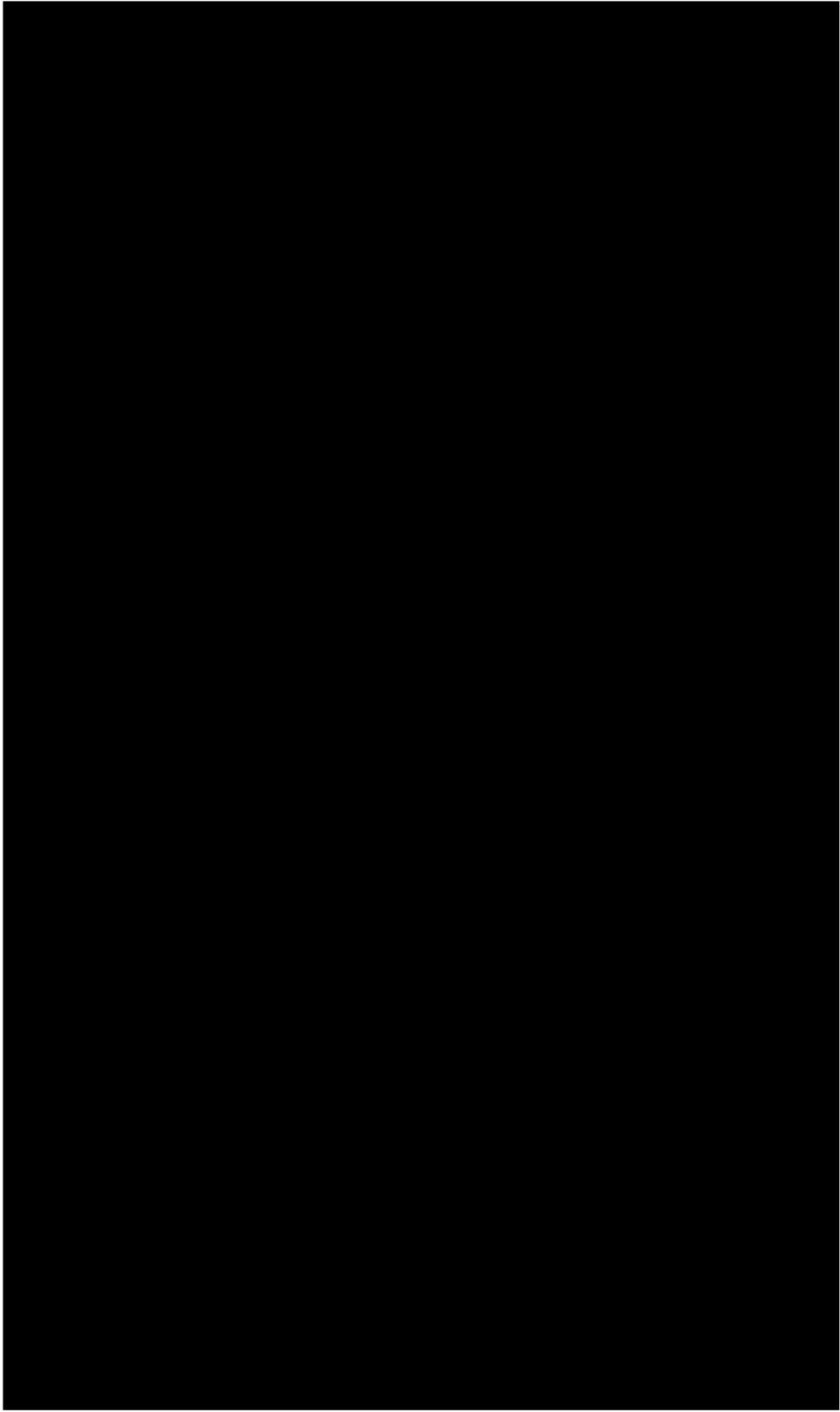


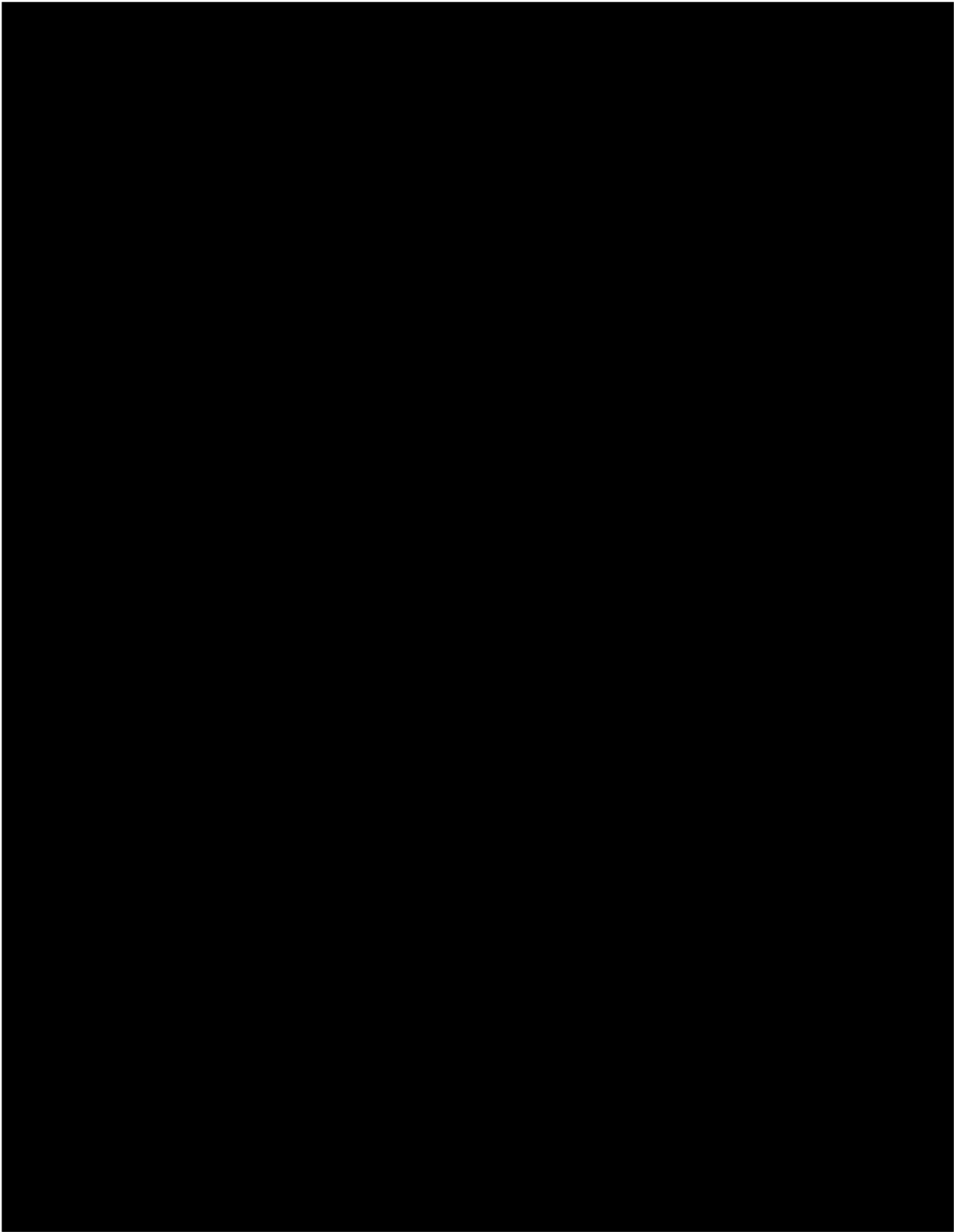


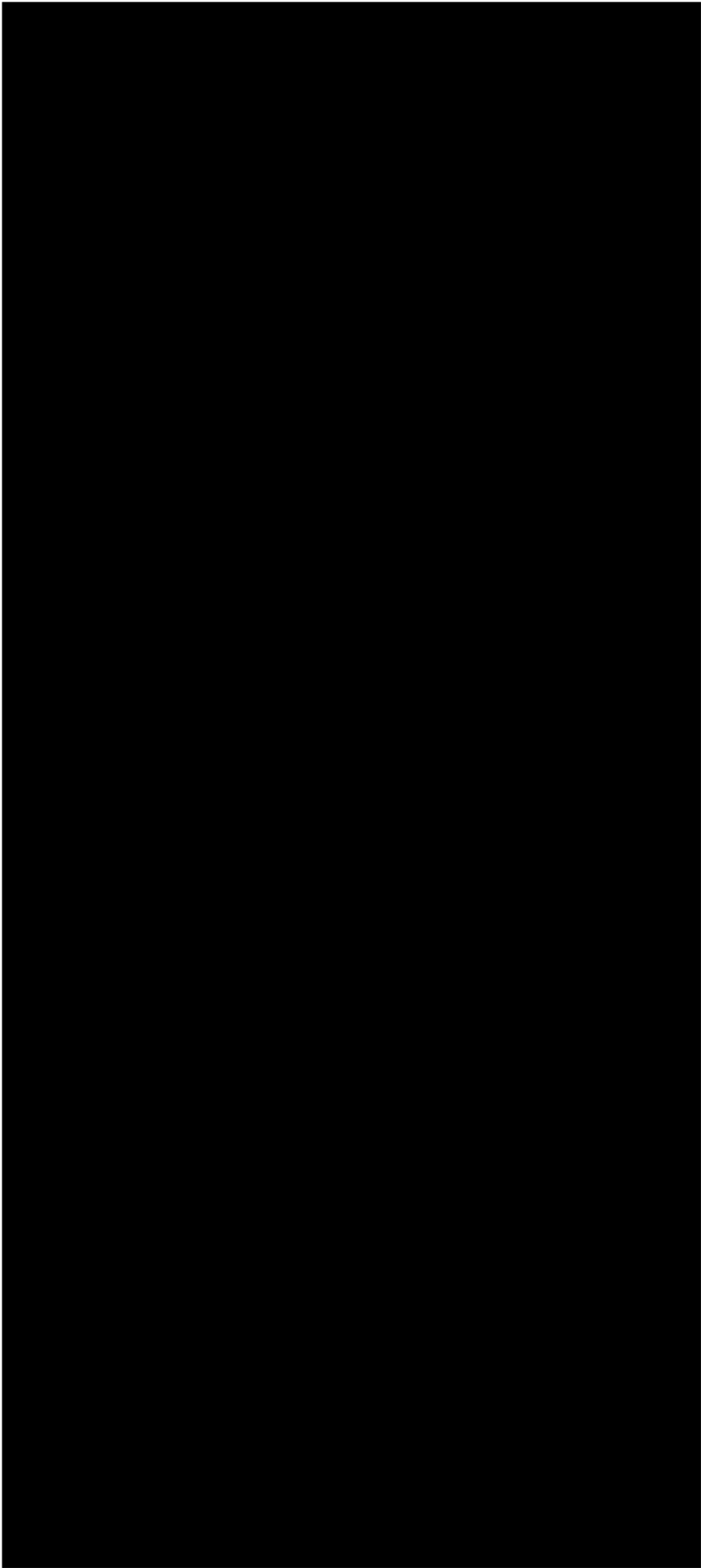

AQ7 – KNOWLEDGE RETENTION TESTING

ITSM Zone is committed to best practice training methods, as standard students' knowledge and learning is tested consistently throughout their course(s).





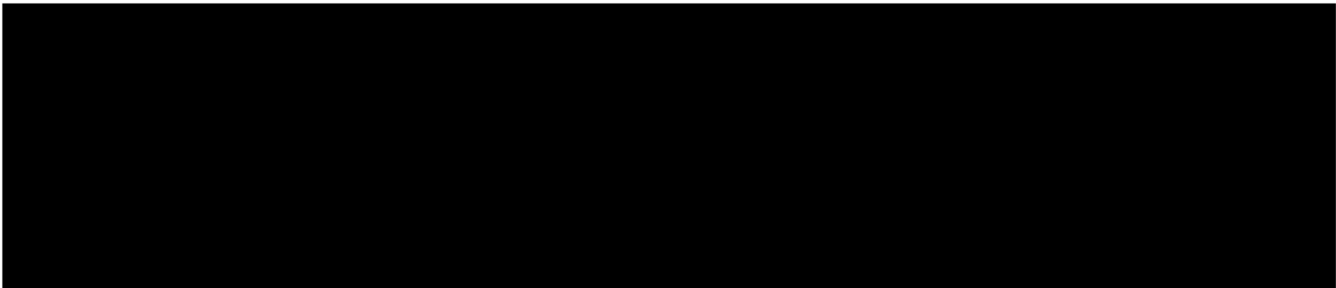







PLAN

ITSM Zone portals can be very quickly deployed, meaning there is a quick set up with no delays to the customer.



AQ9 – EXIT PLAN



SV2 – SOCIAL VALUE: POLICY OUTCOME – INCREASE SUPPLY CHAIN RESILIENCE AND CAPACITY

ITSM Zone is an SME focussed on utilising best practice technology and processes to create, deliver and support e-Learning courses that deliver value to IT Services Professionals.

We are committed to identifying and managing cyber security risks in the delivery of contracts to provide e-Learning. This includes identifying and managing risks within the supply chain.

DIVERSE SUPPLY CHAINS

ITSM Zone works with four Examination Institutes to provide certification exams that provide students with the opportunity to become certified in the qualification that they have studied for.

ITSM Zone also offers a sub-contracted opportunity to [REDACTED]

[REDACTED] and with [REDACTED]

INNOVATION AND DISRUPTIVE TECHNOLOGIES

ITSM Zone takes pride in the use of innovative and new technology to deliver a high-quality learning experience to students. The switch to e-Learning provides a flexible, cost effective alternative to the more traditional classroom environment, and removes the requirement for travel to training venues.

[REDACTED]

There is a commitment to continually assess new products to the market, and evaluate whether these can be utilised to further enhance our offering.

[REDACTED]

[REDACTED]

MANAGE CYBER SECURITY RISKS

ITSM Zone has robust policy and procedure in place, and follows the “10 Steps To Cyber Security” as advocated by the National Cyber Security Centre.

- Risk management regime: We identify and manage risks to our organisation, data and systems. Engaged suppliers have policies and risk management regimes checked. We continually work to mitigate risks to customers and students and policies are reviewed at regular intervals.
- Secure configuration: We identify and baseline technology builds to ensure they have latest security updates. All plug ins are updated to latest version. We remove or disable unnecessary functionality from systems and fix known vulnerabilities. When selecting suppliers, we ensure their security meets required standards.
- Network security is provided with a third-party supplier, on a cloud infrastructure with multiple redundancy built in and is supported and patched to the latest security level. Monthly compliance checks ensure required security patches have been completed.
- Managing privileges: Our team are provided with a reasonable (but minimal) level of system privileges and rights for their role. Privileges are extended to administrators of training portals; allowing them access to only necessary information
- Education and awareness: ITSM Zone recognise all personnel play an important role in organisational security. Team members have clear guidance on the use of technology and equipment and have cyber security awareness training.
- Incident management: 24/7 monitoring and support is in place
- Malware prevention: training is provided on malware and the risks that email, downloads, and using the internet pose. ITSM Zone protect customers by clearly providing details of the email address(es) which will be used in the fulfilment of any contract to provide training, so that students can confidently open communications pertaining to courses.
- Monitoring: ITSM Zone have instructed 3rd party hosting with live 24/7 monitoring. Audits ensure that systems are being used appropriately, with any issues or concerns discussed during team meetings.
- Removable media controls: ITSM Zone urge caution when using external media. Where use is unavoidable, media must be scanned for malware before importing onto a business computer.
- Home and mobile working: ITSM Zone’s home working policy allows the flexibility to work from home or office. All team members are issued with company laptop / PC to be used for business purposes only. Training is provided on the risks associated with accessing devices on unsecured networks.
- Working with suppliers: ITSM Zone work with carefully selected suppliers, including Examination Institutes. Appropriate ITSM Zone personnel have access to their systems to issue exam vouchers. During this process, we have identified that we are logging into secure systems and provide only information necessary to have the voucher issued. This removes the need for communication between ITSM Zone and the exam provider by email.
- Keeping customer data secure: ITSM Zone is registered with the ICO and has a GDPR policy in place. Only appropriate student data is entered into the training portal – a student name and email address only.
- Cyber security insurance: ITSM Zone have cyber security insurance in place, provided by Hiscox CyberClear. This is designed to support and protect from evolving cyber threats and risks associated with data, whether electronic or non-electronic.

Annex 4 – Charges (below)



Annex 5

DATA SECURITY – PART A Technical and Organisation Measures

The Supplier is an independent Controller, and recognises that it is responsible for ensuring its processing – including any processing carried out by a Processor on its behalf – complies with the UK GDPR. The Supplier is responsible for taking appropriate technical and organisation measures to manage the data.

The Supplier is responsible for the following:

- **Compliance with the data protection principles:** it must comply with the data protection principles listed in Article 5 of the UK GDPR.
- **Individuals' rights:** it must ensure that individuals can exercise their rights regarding their Personal Data, including the rights of access, rectification, erasure, restriction, data portability, objection and those related to automated decision-making.
- **Security:** it must implement appropriate technical and organisational security measures to ensure the security of Personal Data.
- **Choosing an appropriate Processor:** it can only use a Processor that provides sufficient guarantees that it will implement appropriate technical and organisational measures to ensure their processing meets UK GDPR requirements. This means the Supplier is responsible for assessing that its Processor is competent to process the Personal Data in line with the UK GDPR's requirements taking into account the nature of the processing and the risks to the Data Subjects.
- **Processor contracts:** it must enter into a binding contract or other legal act with its Processors, which must contain a number of compulsory provisions as specified in Article 28(3) of UK GDPR.
- **Notification of Personal Data Breaches:** the Supplier is responsible for notifying Personal Data breaches to the Information Commissioner's Office and, where necessary, other supervisory authorities in the EU, unless the breach is unlikely to result in a risk to the rights and freedoms of individuals. It is also responsible for notifying affected individuals (if the breach is likely to result in a high risk to their rights and freedoms).
- **Accountability obligations:** it must comply with the UK GDPR accountability obligations, such as maintaining records, carrying out data protection impact assessments and appointing

a data protection officer. For more information please read our guidance on accountability and governance.

- **International transfers:** the Supplier must comply with the UK GDPR's restrictions on transfers of Personal Data outside the EU.
- **Appointing a representative within the European Union:** If the Supplier is based outside the EU but offer services to or monitor individuals inside the EU, it may need to appoint a representative in the EU.
- **Co-operation with supervisory authorities:** it must cooperate with supervisory authorities (such as the Information Commissioner's Office) and help them perform their duties.
- **Data protection fee:** it must pay the Information Commissioner's Office a data protection fee unless it is exempt.

Without limitation, the Supplier shall comply with UK GDPR, see Chapters 1 to 5 in particular Articles 4(7), 5(2), 13-14, 24-28, 30-37, 44, 46-49 and 82 and Recitals 58-61, 73-74, 78-79, 80-89, 97, 101, 108-110 and 146.

DATA SECURITY - PART B

DSP Toolkit and ISO Standards

1. It is the Department of Health and Social Care's policy that all organisations which process NHS patient information must provide security assurance through annual completion and publication of the Data Security and Protection (DSP) Toolkit (<https://www.dsptoolkit.nhs.uk>).
2. To provide assurance that good information governance practices are being maintained, the Supplier must demonstrate, and will allow NHS Digital to audit, that it:

A) meets or exceeds the DSP Toolkit standards required by NHS Digital for their organisation type organisation code in the DSP Toolkit;


If A does not apply, B and/or C, as the Data Discloser may require and specify in writing:

B) is certified against international security standard ISO 27001;

and/or

C) has other security assurance in place which, without prejudice to any other elements of such assurance, meets the requirements below.

3. In cases where the Supplier has not completed a DSP Toolkit assessment to the NHS Digital's satisfaction and where the Supplier is not ISO 27001 certified, the Supplier must ensure that it meets the requirements set out in clause 3 of this Part B of Schedule 2, which NHS Digital reserves the right to audit.
4. Where the Supplier has provided information in writing about what other security assurance it has in place, and without prejudice to the Supplier's other obligations under this agreement, the Supplier shall:
 - process Personal Data only for the provision of health care or adult social care, or the promotion of health, and only for purposes described in this agreement, and which are consistent with the purposes recorded in the Supplier's data protection registration with the Information Commissioner's Office;
 - request and process the minimum data necessary (e.g. using age range rather than age if sufficient);
 - deploy secure processes, procedures, practice and technology for storage and access, commensurate with the Personal Data being Processed;
 - ensure the rights of Data Subjects are met, such as satisfying subject access requests received, ensuring data accuracy and correcting errors, and handling objections and complaints;
 - permanently destroy/delete or erase the Data once it is no longer required for the purpose for which it was collected and confirm destruction to the NHS Digital;

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- ensures all Supplier Personnel with access to Personal Data provide a written undertaking that they understand and will act in accordance with the Data Protection Laws, will not share passwords, and will protect the confidentiality of the Personal Data;
 - report immediately to the Data Discloser any security incidents relating to the Data, and any instances of breach of any of the terms of this agreement; and
 - comply with any specific legislation in relation to the Data (such as the Statistics and Registration Services Act 2007).