**DfE Short Form Contract for Services**

**CONTRACT FOR DfE PAYMENTS APPLICATION:**

**PRIMARY PAYMENTS SERVICE**

 **THIS CONTRACT IS DATED 15 June 2021**

 **Parties**

 **1) The Secretary of State for Education whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT acting as part of the Crown (“the Department”); and**

 **2) Access Systems UK Limited** 08033029 **whose registered office is at City Tower, Piccadilly Plaza, Manchester M1 4BT (“the Contractor”)**

 **Recitals**

 The Contractor has agreed to deliver a BACs Payments service for the Department on the terms and conditions set out in this Contract.

 The Department's reference number for this Contract is CON\_TBC

**1 Interpretation**

**1.1** In this Contract the following words shall mean: -

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| --- | --- |
| “the Services”" | the services to be performed by the Contractor as described in Schedule 1; |
| "Affiliate" | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time; |
| “Central Government Body”“the Contract Manager” | 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:(a) Government Department;(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);(c) Non-Ministerial Department; or(d) Executive Agency;**<REDACTED>** |
| “Contract Period” | The start and end date of the contract as set out in Clause 2 subject to any extensions. |
| "Contractor Personnel" | all employees, agents, Contractors and contractors of the Contractor and/or of any Sub-contractor; |
| “the Contractors Contract Manager | **<REDACTED>** |
|  “Confidential Information” | the Department's Confidential Information and/or the Contractor's Confidential Information; |
| "Contracting Department" | any contracting Department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Department; |
| "Contractor Personnel" | all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor; |
| “Contracts Finder” | the Government’s publishing portal for public sector procurementopportunities. |
| "Control" | means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly; |
|  |  |
| “Controller”, “Processor,” “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer” | take the meaning given in the GDPR |
| **“**Crown” | means Queen Elizabeth II and any successor |
| "Crown Body" | any department, office or agency of the Crown; |
|  |  |
| “Data Loss Event” | any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.  |
| “DPA 2018” | Data Protection Act 2018  |
| “Data Protection Impact Assessment” | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.  |
| “Data Protection Legislation” | (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy;  |
| “Data Subject Request” | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. |
| "Department’s Confidential Information" | all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Department, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential; |
| "Department's Intellectual Property Rights" | means all Intellectual Property Rights comprised in or necessary for or arising from the performance of the Consultancy Services |
| "Environmental Information Regulations" | the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations; |
| "FOIA" | the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation; |
|  |  |
| “GDPR” | the General Data Protection Regulation (Regulation (EU) 2016/679) |
| “Her Majesty's Government” | means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant or officer of such Government |
| "Information" | has the meaning given under section 84 of the Freedom of Information Act 2000;  |
| "Intellectual Property Rights" | means any copyright, rights in designs, database rights, domain names, trademarks, service marks, patents or any applications for any of the foregoing, know-how or similar rights or obligations (whether registerable or not) including Moral Rights as defined in Chapter IV of the Copyright, Designs and Patents Act 1988 |
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|  |  |
| “Joint Controllers” | Where two or more Controllers jointly determine the purposes and means of processing |
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| “Law” | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply; |
| “LED” | Law Enforcement Directive (Directive (EU) 2016/680)   |
| "Personal Data" | shall have the same meaning as set out in the Data Protection Act 1998; |
|  |  |
| “Processor Personnel” | employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract. |
| “Property”  | means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract. |
|  |  |
| “Protective Measures” | appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it including those set out in the Contract. .  |
| “Regulatory Bodies” | those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Department and **"Regulatory Body"** shall be construed accordingly. |
| "Request for Information" | a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations; |
| "SME" | means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and any subsequent revisions. |
| "Sub-contractor" | the third party with whom the Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents; |
|  |  |
| “Sub-processor” | any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract  |
| “VCSE” | means a non-governmental organisation that is value-driven, and which principally reinvests its surpluses to further social, environmental or cultural objectives. |
| "Working Day" | any day other than a Saturday, Sunday or public holiday in England and Wales. |

**1.2** References to “Contract” mean this contract (and include the Schedules). References to “Clauses” and “Schedules” mean clauses of and schedules to this Contract. The provisions of the Schedules shall be binding on the parties as if set out in full in this Contract.

**1.3** Reference to the singular include the plural and vice versa and references to any gender include both genders and the neuter. References to a person include any individual, firm, unincorporated association or body corporate.

**2 Commencement and Continuation**

 The Contractor shall be deemed to be effective from 7 May 2021 and, subject to Clause 10.1 shall complete the Services on or before 6 May 2022.

**The Contract may be extended by a further 12 months subject to satisfactory performance.**

**3 Contractor's Obligations**

**3.1** The Contractor shall promptly and efficiently complete the Services in accordance with the provisions set out in Schedule 1 and the special conditions set out in Schedule 3. Where there is any conflict between the terms of this Contract and the special conditions set out in Schedule 3, the special conditions shall prevail.

**3.2** The Contractor shall comply with the accounting and information provisions of Schedule 2.

**3.3** The Contractor shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.

**4 Departments Obligations**

 The Department will comply with the payment provisions of Schedule 2 provided that the Department has received full and accurate information and documentation as required by Schedule 2 to be submitted by the Contractor for work completed to the satisfaction of the Department.

**5 Changes to the Department's Requirements**

**5.1** The Department shall notify the Contractor of any material change to the Department's requirement under this Contract.

**5.2** The Contractor shall use its best endeavours to accommodate any changes to the needs and requirements of the Department provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs to be agreed between the parties in writing.

**6 Management**

**6.1** The Contractor shall promptly comply with all reasonable requests or directions of the Contract Manager in respect of the Services.

**6.2** The Contractor shall address any enquiries about procedural or contractual matters in writing to the Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.

**7 Contractor's Employees and Sub-Contractors**

**7.1** Where the Contractor enters into a contract with a supplier or contractor for the purpose of performing its obligations under the Contract (the “**Sub-contractor**”) it shall ensure prompt payment in accordance with this clause 7.1. Unless otherwise agreed by the Department in writing, the Contractor shall ensure that any contract requiring payment to a Sub-contractor shall provide for undisputed sums due to the Sub-contractor to be made within a specified period from the receipt of a valid invoice not exceeding:

7.1.1 10 days, where the Sub-contractor is an SME; or

7.1.2 30 days either, where the sub-contractor is not an SME, or both the Contractor and the Sub-contractor are SMEs,

The Contractor shall comply with such terms and shall provide, at the Department’s request, sufficient evidence to demonstrate compliance.

**7.2** The Department shall be entitled to withhold payment due under clause 7.1 for so long as the Contractor, in the Department’s reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with clause 7.1. For the avoidance of doubt the Department shall not be liable to pay any interest or penalty in withholding such payment.

**7.3** The Contractor shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in all respects to perform the Services.

7.4 The Contractor shall give to the Department if so requested a list of all persons who are or may be at any time directly concerned with the performance of this Contract specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the Department may reasonably require.

7.5 If the Department notifies the Contractor that it considers that an employee or sub-contractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Contract, then the Contractor shall, as soon as is reasonably practicable, take all such steps as the Department considers necessary to remedy the situation or, if so required by the Department, shall remove the said employee or sub-contractor from providing the Services and shall provide a suitable replacement (at no cost to the Department).

7.6 The Contractor shall take all reasonable steps to avoid changes of employees or sub-contractors assigned to and accepted to provide the Services under the Contract except whenever changes are unavoidable or of a temporary nature. To the extent reasonably practicable, the Contractor shall give at least one month's written notice to the Contract Manager of proposals to change key employees or sub-contractors.

**7.7** The Contractor shall immediately notify the Department if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.

**7.8** The Contractor, its employees, and sub-contractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.

**7.9** The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Department’s reasonable security requirements as required from time to time.

**8** **Intellectual Property Rights**

**8.1** It is acknowledged and agreed between the parties that all existing or future Department's Intellectual Property Rights shall vest in the Contractor absolutely. Except as expressly stated in clause 8.2 below, this Contract does not grant the Crown or the Department any rights to, under or in, any Intellectual Property Rights, or any other rights or licences in respect of the Services.

**8.2** Any Intellectual Property Rights of the Contractor which are in existence at the date of this Contract and which are comprised in or necessary for or arising from the performance of the Consultancy Services owned by the Contractor ("**Background Intellectual Property**") shall remain in the ownership of the Contractor but in consideration of the fees payable pursuant to this Contract, the Contractor hereby grants to the Department in respect of such Background Intellectual Property a non-exclusive, royalty-free licence with rights to grant sub-licences.

**8.3** Not used.

**8.4** Not used.

**8.5** The Contractor warrants:

8.5.1that the Department's Intellectual Property Rights comprise the original work of and were created by or on behalf of the Contractor;

* + 1. that the Department's Intellectual Property Rights have not and will not be copied wholly or in part from any other work or material; and
		2. **T**hat the use of or exercise by the Department of the Department's Intellectual Property Rights and the Background Intellectual Property will not infringe the rights of any third party.
		3. that the Contractor has not granted or assigned any rights of any nature in the Department's Intellectual Property Rights to any third party.

**8.6** The Contractor shall defend the Department against any claim that the Services infringe any Intellectual Property Rights of a third party, and shall indemnify the Department for any amounts awarded against the Department in judgment or settlement of such claims, provided that:

8.6.1 the Contractor is given prompt notice by the Department of any such claim;

8.6.2 neither the Department nor the Crown makes any admission of liability, agreement or compromise in relation to the claim;

8.6.3 the Department provides reasonable co-operation to the Contractor in the defence and settlement of such claim, at the Contractor’s expense; and

8.6.4 the Contractor is given sole authority to defend or settle the claim.

 In the defence or settlement of any claim, the Contractor may procure the right for the Department to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Contract on two Working Days' notice to the Department. This clause 8.6: (i) states the Department’s and the Crown’s sole and exclusive rights and remedies, and the Contractor’s (including its employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights by the Services; and (ii) is subject to the exclusions and limitations of liability set out in clause 9 below.

**8.7** Subject to clause 9.6 below, in no event shall the Contractor, its employees, agents or sub-contractors have any liability under this Contract or the indemnity in clause 8.6 above to the extent that any alleged infringement by the Services of any Intellectual Property Rights of a third party is based on:

8.7.1 a modification of the Services by anyone other than the Contractor; or

8.7.2 the Department’s use of the Services in a manner contrary to the instructions given to it by the Contractor; or

 8.7.3 the Department’s use of the Services after notice of the alleged or actual infringement from the Contractor or any appropriate authority, or any third party.

**9 Warranty and Indemnity**

**9.1** The Contractor warrants to the Department that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Department to expect in all the circumstances. The Department will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.

**9.2** Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Contract then the Department shall be entitled, where appropriate to:

9.2.1 require the Contractor promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or

9.2.2 assess the cost of remedying the failure (“the assessed cost”) and to deduct from any sums due to the Contractor the Assessed Cost for the period that such failure continues.

**9.3** The Contractor shall be liable for and shall indemnify the Department in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Department or otherwise arising out of or in the course of or caused by the provision of the Services.

**9.4** The Contractor shall be liable for and shall indemnify the Department against expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Contract or otherwise through the default of the Contractor as follows:

* The annual total liability for all Property defaults will not exceed the sum of £1,000,000.
* The annual total liability for Buyer Data defaults will not exceed £1,000,000 or 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).
* The annual total liability for all other defaults will not exceed the greater of £1,000,000 or 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).

**9.5** All property of the Contractor whilst on the Department's premises shall be there at the risk of the Contractor and the Department shall accept no liability for any loss or damage howsoever occurring to it.

**9.6** The Contractor shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. The Contractor shall upon request produce to the Department, its policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.

 The insurance(s) required will be:

* Professional indemnity insurance cover to be held by the Supplier and by any agent, Subcontractor or consultant involved in the supply of the Services. This professional indemnity insurance cover will have a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit the Buyer requires (and as required by Law) employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law.

**10 Termination**

**10.1** This Contract may be terminated by either party giving to the other party at least 30 days’ notice in writing.

**10.2** In the event of any breach of this Contract by either party, the other party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the party not in breach may terminate this Contract with immediate effect by notice in writing.

**10.3** In the event of a material breach of this Contract by either party, and, where such material breach is capable of remedy, the other Party fails to remedy such breach within a period of 10 Working Days of being notified of such breach by the Party, the other Party may terminate this Contract with immediate effect by notice in writing.

**10.4** This Contract may be terminated by the Department with immediate effect by notice in writing if at any time: -

**10.4.1** the Contractor passes a resolution that it be wound-up or that an application be made for an administration order or the Contractor applies to enter into a voluntary arrangement with its creditors; or

**10.4.2** a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Contractor's property, assets or any part thereof; or

**10.4.3** the court orders that the Contractor be wound-up or a receiver of all or any part of the Contractor's assets be appointed; or

**10.4.4** the Contractor is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986.

**10.4.5** there is a change in the legal or beneficial ownership of 50% or more of the Contractor’s share capital issued at the date of this Contract or there is a change in the control of the Contractor, unless the Contractor has previously notified the Department in writing. For the purpose of this Sub-Clause 10.4.5 “control” means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power.

**10.4.6** the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct.

**10.4.7** the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;

**10.4.8** the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to the payment of Social Security contributions;

**10.4.9** the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to payment of taxes;

**10.4.10**the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Contract.

**10.5** Nothing in this Clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

10.6 On termination of this Contract for any reason, any rights, remedies, obligations, or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination, shall not be affected or prejudiced.

**11 Status of Contractor**

**11.1** In carrying out its obligations under this Contract the Contractor agrees that it will be acting as principal and not as the agent of the Department.

**11.2** The Contractor shall not say or do anything that may lead any other person to believe that the Contractor is acting as the agent of the Department.

**12 Confidentiality**

**12.1** Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:

12.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

12.1.2not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

**12.2** Clause12 shall not apply to the extent that:

12.2.1such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 13 (Freedom of Information);

12.2.2such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

12.2.3such information was obtained from a third party without obligation of confidentiality;

12.2.4such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

12.2.5it is independently developed without access to the other party's Confidential Information.

**12.3** The Contractor may only disclose the Department's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Project and who need to know the information and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

**12.4** The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Department's Confidential Information received otherwise than for the purposes of this Contract.

**12.5** The Contractor shall ensure that their employees, servants or such professional advisors or consultants are aware of the Contractor’s obligations under this Contract.

**12.6** Nothing in this Contract shall prevent the Department from disclosing the Contractor's Confidential Information:

12.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Department or of the relevant Central Government Body;

12.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

12.6.3 to the extent that the Department (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

12.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 12.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;

12.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or

12.6.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.

**12.7** The Department shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 12 is made aware of the Department's obligations of confidentiality.

**12.8** Nothing in this clause 12 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

**12.9** The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

**12.10** Subject to Clause 12.9, the Contractor hereby gives its consent for the Department to publish the Contract in its entirety, including from time-to-time agreed changes to the Contract, to the general public.

**12.11** The Department may consult with the Contractor to inform its decision regarding any redactions, but the Department shall have the final decision in its absolute discretion.

**12.12** The Contractor shall assist and cooperate with the Department to enable the Department to publish this Contract.

**13 Freedom of Information**

**13.1** The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department to enable the Department to comply with its information disclosure obligations.

**13.2** The Contractor shall and shall procure that its Sub-contractors shall:

13.2.1 transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

13.2.2 provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five Working Days (or such other period as the Department may specify) of the Department's request; and

13.2.3 provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

**13.3** The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

**13.4** In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Department.

**13.5** The Contractor acknowledges that (notwithstanding the provisions of Clause 13) the Department may, acting in accordance with the Ministry of Justice’s Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (**“the Code”**), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:

13.5.1 in certain circumstances without consulting the Contractor; or

13.5.2 following consultation with the Contractor and having taken their views into account.

provided always that where 13.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

**13.6** The Contractor shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

**14 Access and Information**

 The Contractor shall provide access at all reasonable times to the Department's internal auditors or other duly authorised staff or agents to inspect such documents as the Department considers necessary in connection with this Contract and where appropriate speak to the Contractors employees.

**15 Transfer of Responsibility on Expiry or Termination**

**15.1** The Contractor shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.

**15.2** Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in the Schedule.

**15.3** The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility.

**16** **Tax Indemnity**

**16.1** Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration. Where the Department has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty’s Revenue and Customs the Department reserves the right to calculate Income Tax and pay it to HMRC. The amounts will be deducted from the Contractor’s fee for the work provided.

**16.2** Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration. Where the Department has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty’s Revenue and Customs the Department reserves the right to calculate primary (employee) National Insurance contributions (NICs) and pay them to HMRC. The amounts will be deducted from the Contractor’s fee for the work provided.

**16.3** The Department may, at any time during the term of this contract, ask the Contractor to provide information which demonstrates how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it.

**16.4** A request under Clause 16.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.

**16.5** The Department may terminate this contract if-

(a) in the case of a request mentioned in Clause 16.3 above if the Contractor:

(i) fails to provide information in response to the request within a reasonable time,

or

(ii) provides information which is inadequate to demonstrate either how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it;

(b) in the case of a request mentioned in Clause 16.4 above, the Contractor fails to provide the specified information within the specified period, or

(c) it receives information which demonstrates that, at any time when Clauses 16.1 and 16.2 apply, the Contractor is not complying with those Clauses.

**16.6** The Department may supply any information which it receives under Clause 16.3 to the Commissioners of Her Majesty’s Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

**16.7** The Contractor warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.

**16.8** The Contractor will account to the appropriate authorities for any income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.

**16.9** The Contractor shall indemnify Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by Department in connection with any such assessment or claim.

**16.10** The Contractor authorises the Department to provide the HM Revenue and Customs and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not Department is obliged as a matter of law to comply with such request.

**17 Data Protection**

**17.1** The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller, and the Contractor is the Processor unless otherwise specified in Schedule 3a. The only processing that the Processor is authorised to do is listed in Schedule 3a by the Controller and may not be determined by the Processor. Each Party shall comply with all applicable requirements of the Data Protection Legislation in the performance of this Contract.

**17.2** The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

**17.3** The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

**17.4** The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

(a) process that Personal Data only in accordance with Schedule 3a , unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

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

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(c) ensure that:

(i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 3a);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Processor’s duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the UK and the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

(i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

(iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

(e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

**17.5** Subject to clause 17.6, the Processor shall notify the Controller immediately if it:

(a) receives a Data Subject Request (or purported Data Subject Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

**17.6** The Processor’s obligation to notify under clause 17.5 shall include the provision of further information to the Controller in phases, as details become available.

**17.7** Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 17.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

(a) the Controller with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Controller following any Data Loss Event;

(e) assistance as requested by the Controller with respect to any request from the Information Commissioner’s Office, or any consultation by the Controller with the Information Commissioner's Office.

**17.8** The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

(a) the Controller determines that the processing is not occasional;

(b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

(c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

**17.9** The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.

**17.10** Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

**17.11** Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

(a) notify the Controller in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Controller;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 17 such that they apply to the Sub-processor; and

(d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

**17.12** The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

**17.13** The Controller may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

**17.14** The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Controller may on not less than 30 Working Days’ notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

**18 Amendment and variation**

 No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Contractor shall comply with any formal procedures for amending or varying contracts which the Department may have in place from time to time.

**19 Assignment and Sub-contracting**

 The benefit and burden of this Contract may not be assigned or sub-contracted in whole or in part by the Contractor without the prior written consent of the Department. Such consent may be given subject to any conditions which the Department considers necessary. The Department may withdraw its consent to any sub-contractor where it no longer has reasonable grounds to approve of the sub-contractor or the sub-contracting arrangement and where these grounds have been presented in writing to the Contractor.

**20** **The Contract (Rights of Third Parties) Act 1999**

This Contract is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person not a party to the Contract.

**21 Waiver**

 No delay by or omission by either Party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

**22 Notices**

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

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

22.2.1 if delivered by hand, when left at the proper address for service;

22.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;

22.2.3 if made by e-mail, at the time of transmission, dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message or, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

**23 Dispute resolution**

**23.1** The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.

**23.2** Any dispute not capable of resolution by the parties in accordance with the terms of Clause 23 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

**23.3** No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.

**24 Discrimination**

**24.1** The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.

**24.2** The Contractor shall take all reasonable steps to secure the observance of Clause 24.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

**25 Law and Jurisdiction**

 This Contract shall be governed by and interpreted in accordance with English Law and the parties submit to the jurisdiction of the English courts.

As witness the hands of the parties

Authorised to sign for and on Authorised to sign for and on

behalf of the Secretary of behalf of Access Systems UK Limited

State for Education

Signature Signature

**<REDACTED> <REDACTED>**

**Schedule 1**

**1 Background**

1.1 The DfE make regular payment of approx. £100bn to Vendors who are ‘Suppliers of Services’, and ‘Providers of skills training’ and to individuals for ‘salary and expenses payments’, and payments are also made for other organisations such as ESFA which is an executive agency, sponsored by the Department for Education, and other DfE Arm’s Length Bodies (ALB’s).

1.2 DfE operates two applications that enable payments to be made via BACS. The Department will continue its ongoing dual use of two applications to provide an additional level of resilience to its payment operations.

1.3 The minimum viable product will provide a fully tested and live solution meeting agreed ‘must have’ Minimum Viable Product (MVP) business requirements and design specifications.

1.4 The essential requirements are:

• Provision of a Bacs direct Payment service

• Provision of a HSM / CSM Certificate based solution

• Service Underpinned by Bacs Approved Software, or Bacs Approved Software Supplier

1.5 Supplier hosting of the solution in their private cloud is the DfE’s preferred option.

1.6 DfE intends to meet the requirements by working with the supplier to configure, test and deploy the solution along with the provision of an ongoing support and maintenance service from the Go Live date for the remainder of the contract.

1.7 The engagement will necessitate a close working partnership with the DfE Finance community, and IT teams from Technology Group and the Technical Architecture & Security Assurance groups and managerial staff to ensure the strategic fit of the solution to DfE strategy & standards; business process continuity; and knowledge transfer.

**2 Aim**

2.1 The Contractor shall use all reasonable endeavours to achieve the following aims:

* To help the Department to pay suppliers and education and training providers, in line with the agreed funding payment schedule, and have the ability to scale up to service the core department and all of its executive agencies and arm’s length bodies **<REDACTED>**
* Ensure that the Department’s Bacs Payment service, has the latest security controls in place, so as to minimise any risk.
* To ensure the Department meets the statutory and audit requirements.
* Future proof the system from future organisational changes.

**3 Objectives and Deliverables**

3.1 The Contractor shall use all reasonable endeavours to achieve the following objectives:

* Provision of a Bacs Direct Payment
* Underpinned by an approved Bacs Software, or Bacs Approved Software Supplier
* Provision of HSM Certificate based solution e.g., Cloud Based (CSM)

**NB** It is understood that there is no transactional limit within this contract and no transaction threshold that can be exceeded.

 The full list of the deliverables which underpin delivery of the objectives is embedded here:

 **<REDACTED>**

**4 Methodology**

The Contractor shall perform the tasks detailed in the Schedule of Work.

**SCHEDULE OF WORK**

**<REDACTED>**

**AccessPay Service Hours:**

**Normal Business Hours**: 8am to 6pm – Monday to Friday (Excluding bank holidays)

**Extended Support Hours\***: 6pm to 10:30pm - Monday to Friday (Excluding bank holidays)

\*Support available to customers with a valid support contract.

**Service Availability:**

The service is available 24 x 7 apart from the planned maintenance windows.

AccessPay’s contracted SLA is 99.5%.

The actual service availability is 100% within the contracted business hours. This high level

of service is possible due to the following:

* active-active configuration of the system,
* sophisticated warning and monitoring at platform and application level
* the operations team and the tight (ISO27001 and ISO22301) processes they follow.

**Service Credits:**

1. If Software availability falls below the Uptime Service Level in a given calendar month (“Service Delivery Failure” 99.5%), the Supplier shall credit the Customer’s account by an amount of ten (10) percent of the total Fees owed for that calendar month for each full hour the Software is Unavailable (“Service Credit”).
2. The maximum Service Credit allowable in a given calendar month is limited to an amount equal to the total Subscription Fee owed by the Customer for that calendar month. The Customer acknowledges and agrees that the terms of this clause relating to Service Credits constitute a genuine pre-estimate of the loss or damage that the Customer would suffer as a result of the Supplier’s Service Delivery Failure and are not intended to operate as a penalty for the Supplier’s non-performance.

**AccessPay Priority / Severity definitions:**

P1 – Urgent - Incident resulting in entire production system being down with critical or major business impact.

P2 – High - Incident resulting in inability to complete specific processing, with no viable workaround.

P3 – Medium - Incident resulting in inability to complete specific processing, but a workaround does exist to allow said processing to complete.

P4 – Low - Cosmetic or minor issue, minor or no business impact.

Development Support –

If it is determined the cause of a support incident is a software bug, the support incident is

then passed to Development Support. P3 - Medium and P4 - Low priority support incidents

passed to Development Support are not covered by a Service Level Agreement.

**Business impact priority definitions:**

System / Service Down - (Minor) P3 – (Moderate) P2 – (Major) P1\* - (Critical) P1\*.

System / Service Affected - (Minor) P4 – (Moderate) P3 – (Major) P2 - (Critical) P2.

User Down / Affected - (Minor) P4 – (Moderate) P3 – (Major) P3 - (Critical) P2.

\*Only applicable to Production Services

**AccessPay Target Resolution Times:**

P1 – 15 Minutes SLA response time – 1 Hours Target Resolution time – 30 Minutes update frequency

P2 – 30 Minutes SLA response time – 4 Hours Target Resolution time – 1 Hour update frequency

P3\*\* – 1 Hour SLA response time – 24 Hours Target Resolution time – 2 Hours update frequency.

P4\*\* – 24 Hours SLA response time – 5 Working days Target Resolution time – Daily update frequency

Development Support –

5 Days SLA response time – N/A Target Resolution time – N/A update frequency

\*\* If it is determined the cause of a support incident is a software bug, the support incident.

is then passed to Development Support. P3 - Medium and P4 - Low priority support

incidents passed to Development Support are not covered by a Service Level Agreement.

**Routine Maintenance:**

**Software updates** - Service disruption and / or service outage should be expected –

Monthly – first or second Monday of each month – During the hours of 6pm and 10pm

**Routine infrastructure maintenance** – Service disruption may or may not be required.

Weekends – During the hours of 8am and 10am.

Communication will be sent out for all service outages.

**Schedule 2**

**Schedule 2**

**1** Table

The payment profile for this Call-Off Contract is:

* Year 1 costs will include both operational and implementation costs, which will be paid on a monthly basis in arrears.
* The supplier year 2 costs will be paid monthly in arrears.
* Change requests will be paid monthly in arrears.

.

The project and service delivery costs are inclusive of VAT.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Year 1** **(exc VAT)** | **Year 1****(inc VAT)** | **Year 2** **(exc VAT)** | **Year 2****(inc VAT)** | **TOTAL****(exc VAT)** | **TOTAL****(inc VAT)** |
| **Maintenance / licence costs (“Core Solution”** | **<REDACTED>** | **<REDACTED>** | **<REDACTED>** |
| **Implementation (test environment)** | **<REDACTED>** | **<REDACTED>** |
| **Total Core Solution/Test Environment** | **<REDACTED>** | **<REDACTED>** |
| **Change budget (additional SUNs/ ad-hoc development)** | **<REDACTED>** | **<REDACTED>** |
| **Total** | **£62,284** | **£74,740.80** |

**Change Budget:**

* an increase in SUN numbers/users agreed with the department.

Each SUN is charged at <REDACTED> annual fee therefore <REDACTED> for 5 SUNs. There are no set up fees for configuring a new SUN.

Each named user is charged at <REDACTED> annual fee therefore <REDACTED> for 5 users.

<REDACTED>

For Multi Factor Authentication of the user’s access, there is an additional annual fee of <REDACTED> giving a total fee per user including Multi Factor Authentication of <REDACTED>

* any ad hoc development business might want to process via a call off / Request for Quote process (which would need to be agreed through Change Control). Professional Services Day Rate for such services: <REDACTED>

**2** Funds allocated to a particular expenditure heading in the table at paragraph 1 ("the Table") are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only. The allocation of funds in the Table may not be altered except with the prior written consent of the Department.

**3** The Contractor shall maintain full and accurate accounts for the Service against the expenditure headings in the Table. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Contract. Input and output VAT shall be included as separate items in such accounts.

**4** The Contractor shall permit duly authorised staff or agents of the Department or the National Audit Office to examine the accounts at any reasonable time and shall furnish oral or written explanations of the account if required. The Department reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Contractor has used the Department's resources in the performance of this Contract.

**5** Invoices shall be prepared by the Contractor on the invoice dates specified in the Table in arrears and shall be detailed against the expenditure headings set out in the Table. The Contractor or its nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Contractor on the Service in accordance with the Contract and that the invoice does not include any costs being claimed from any other body or individual or from the Department within the terms of another contract.

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

**7** Invoices shall be sent, within 14 days of the end of the relevant month electronically by email to, <REDACTED>quoting the Contract reference number. To request a statement, please email <REDACTED>quoting the Contract reference number. The Department undertakes to pay correctly submitted invoices within 5 days of receipt. The Department is obliged to pay invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Department. Any correctly submitted invoices that are not paid within 30 days will be subject to the provisions of the Late Payment of Commercial Debt (Interest) Act 1998. A correct invoice is one that: is delivered in timing in accordance with the contract; is for the correct sum; in respect of goods/services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, supplier name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated address. If any problems arise, contact the Department's Contract Manager. The Department aims to reply to complaints within 10 working days. The Department shall not be responsible for any delay in payment caused by incomplete or illegible invoices.

**8** The Contractor shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in the Department's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Department shall only be liable to reimburse so much (if any) of the expenditure disallowed as, in the Department's reasonable opinion after consultation with the Contractor, would reasonably have been required for that purpose.

**9** If this Contract is terminated by the Department due to the Contractors insolvency or default at any time before completion of the Service, the Department shall only be liable under paragraph 1 to reimburse eligible payments made by, or due to, the Contractor before the date of termination.

**10** On completion of the Service or on termination of this Contract, the Contractor shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Service. The final invoice shall be submitted not later than 30 days after the date of completion of the Service.

**11** The Department shall not be obliged to pay the final invoice until the Contractor has carried out all the elements of the Service specified as in Schedule 1.

**12** It shall be the responsibility of the Contractor to ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the Department all amounts due to be reimbursed under this Contract shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.

#  End of Schedule 2

**Schedule 3**

**Schedule 3a**

**Processing, Personal Data and Data Subjects**

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

1. The contact details of the Controller’s Data Protection Officer are:

<REDACTED>

1. The contact details of the Processor’s Data Protection Officer are:

 <REDACTED>

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

|  |  |
| --- | --- |
| Description  | Details  |
| Identity of the Controller and Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller, and the Contractor is the Processor in accordance with Clause 17.1. |
| Subject matter of the processing  | <REDACTED> |
| Duration of the processing  |  Duration of the Agreement |
| Nature and purposes of the processing  | <REDACTED> |
| Type of Personal Data  | <REDACTED> |
| Categories of Data Subject  | AccessPay Bacs Connectivity – Unified Payments Platform is expected to support all processes related to above. |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data  | All records to be returned to DfE as they must be retained for a minimum of 7 years and must be available for reporting purposes |
| Permitted subcontractors | Rackspace |

**DfE – Library of Clauses: Special Conditions for Contracts**

 Any drawings, specifications or other data completed or provided in connection with this Contract shall become or, as the case may be, remain the property of the Department and be delivered up to the Department at the times shown in Schedule 1 or on completion or termination of the Contract.

**Departmental Security Standards [Updated 14 December 2020]**

**Departmental Security Standards for Business Services and ICT Contracts**

|  |  |
| --- | --- |
| “BPSS”“Baseline Personnel Security Standard” | means the Government’s HMG Baseline Personal Security Standard . Further information can be found at: <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard> |
| “CCSC”“Certified Cyber Security Consultancy” | is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. See website:<https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy>  |
| “CCP”“Certified Professional” | is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession. See website:<https://www.ncsc.gov.uk/information/about-certified-professional-scheme>  |
| “CPA”“Commercial Product Assurance”[formerly called “CESG Product Assurance”] | is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards.. See website: <https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>  |
| “Cyber Essentials”“Cyber Essentials Plus” | Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme. There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to these providers: <https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body>  |
| “Data”“Data Controller”“Data Protection Officer”“Data Processor”“Personal Data”“Personal Data requiring Sensitive  Processing” “Data Subject”, “Process” and “Processing” | shall have the meanings given to those terms by the Data Protection Act 2018 |
| "Department’s Data"“Department’s Information” | is any data or information owned or retained in order to meet departmental business objectives and tasks, including:(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:(i) supplied to the Contractor by or on behalf of the Department; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or(b) any Personal Data for which the Department is the Data Controller; |
| “DfE”“Department” | means the Department for Education |
| “Departmental Security Standards” | means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver. |
| “Digital Marketplace / G-Cloud” | means the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.  |
| End User Devices | means the personal computer or consumer devices that store or process information. |
| “Good Industry Practice”“Industry Good Practice” | means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector. |
| “Good Industry Standard”“Industry Good Standard” | means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector. |
| “GSC”“GSCP” | means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <https://www.gov.uk/government/publications/government-security-classifications>  |
| “HMG” | means Her Majesty’s Government |
| “ICT” | means Information and Communications Technology (ICT) and is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution |
| “ISO/IEC 27001” “ISO 27001” | is the International Standard for Information Security Management Systems Requirements |
| “ISO/IEC 27002” “ISO 27002” | is the International Standard describing the Code of Practice for Information Security Controls. |
| “ISO 22301” | is the International Standard describing for Business Continuity |
| “IT Security Health Check (ITSHC)”“IT Health Check (ITHC)”“Penetration Testing” | means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system. |
| “Need-to-Know” | means the Need-to-Know principle employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties. |
| “NCSC” | The National Cyber Security Centre (NCSC) is the UK government’s National Technical Authority for Information Assurance. The NCSC website is <https://www.ncsc.gov.uk>  |
| “OFFICIAL”“OFFICIAL-SENSITIVE”  | the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP). the term ‘OFFICIAL–SENSITIVE is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the GSCP. |
| “RBAC”“Role Based Access Control” | means Role Based Access Control. A method of restricting a person’s or process’ access to information depending on the role or functions assigned to them. |
| “Storage Area Network” “SAN” | means an information storage system typically presenting block based storage (i.e. disks or virtual disks) over a network interface rather than using physically connected storage.  |
| “Secure Sanitisation” | means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. NCSC Guidance can be found at: <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media> The disposal of physical documents and hardcopy materials advice can be found at: <https://www.cpni.gov.uk/secure-destruction> |
| “Security and Information Risk Advisor” “CCP SIRA”“SIRA” | means the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also:<https://www.ncsc.gov.uk/articles/about-certified-professional-scheme>  |
| “Senior Information Risk Owner” “SIRO” | means the Senior Information Risk Owner (SIRO) responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arms length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties.  |
| “SPF”“HMG Security Policy Framework” | means the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely. <https://www.gov.uk/government/publications/security-policy-framework>  |

* 1. The Contractor shall be aware of and comply the relevant [HMG security policy framework](https://www.gov.uk/government/publications/security-policy-framework), [NCSC guidelines](https://www.ncsc.gov.uk/section/advice-guidance/all-topics) and where applicable DfE Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
	2. Where the Contractor will provide products or services or otherwise handle information at OFFICIAL for the Department, the requirements of [Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification](https://www.gov.uk/government/publications/procurement-policy-note-0914-cyber-essentials-scheme-certification) - [Action Note 09/14](https://www.gov.uk/government/publications/procurement-policy-note-0914-cyber-essentials-scheme-certification) dated 25 May 2016, or any subsequent updated document, are mandated, namely that contractors supplying products or services to HMG shall have achieved, and will be expected to retain Cyber Essentials certification at the appropriate level for the duration of the contract. The certification scope shall be relevant to the services supplied to, or on behalf of, the Department.

12.3 Where clause 12.2 above has not been met, the Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements).

The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).

* 1. The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service and will handle all data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
	2. Departmental Data being handled in the course of providing an ICT solution or service must be separated from all other data on the Contractor’s or sub-contractor’s own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required in line with clause 12.14.
	3. The Contractor shall have in place and maintain physical security to premises and sensitive areas in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access), CCTV, alarm systems, etc.
	4. The Contractor shall have in place and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Departmental Data. This policy should include appropriate segregation of duties and if applicable role based access controls (RBAC). User credentials that give access to Departmental Data or systems shall be considered to be sensitive data and must be protected accordingly.
	5. The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to:
	+ physical security controls;
	+ good industry standard policies and processes;
	+ malware protection;
	+ boundary access controls including firewalls, application gateways, etc;
	+ maintenance and use of fully supported software packages in accordance with vendor recommendations;
	+ use of secure device configuration and builds;
	+ software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
	+ user identity and access controls, including the use of multi-factor authentication for sensitive data and privileged account accesses;
	+ any services provided to the department must capture audit logs for security events in an electronic format at the application, service and system level to meet the department’s logging and auditing requirements, plus logs shall be:
		- retained and protected from tampering for a minimum period of six months;
		- made available to the department on request.
	1. The contractor shall ensure that any departmental data (including email) transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.
	2. The contractor shall ensure that any departmental data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the department except where the department has given its prior written consent to an alternative arrangement.
	3. The contractor shall ensure that any device which is used to process departmental data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eud-overview/eud-security-principles>.
	4. Whilst in the Contractor’s care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.

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

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

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

* 1. In the event of termination of contract due to expiry, liquidation or non-performance, all information assets provided, created or resulting from the service shall not be considered as the supplier’s assets and must be returned to the department and written assurance obtained from an appropriate officer of the supplying organisation that these assets regardless of location and format have been fully sanitised throughout the organisation in line with clause 12.15.
	2. In the event of termination, equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored by the Contractor must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC approved product or method.

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

Evidence of secure destruction will be required in all cases.

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

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

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

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

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

**General Clauses**

**Contractor’s Standards**

The Contractor shall as far as practicable satisfy the Department that it operates to an acceptable standard such as BS 5750, BS EN ISO 9000 or an equivalent.