**DATED                2015**

**(1) SECRETARY OF STATE FOR EDUCATION**

**and**

**(2) [ ]**

|  |
| --- |
| **CONTRACT FOR THE DESIGN AND DELIVERY OF QUALITY ASSURANCE MODELS FOR RECEPTION BASELINE ASSESSMENTS** |

**THIS CONTRACT IS DATED [ ]**

**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) \*\*\**enter company name and registered number*\*\*\* **whose registered office is at \*\*\****enter the full address***\*\*\*** ("**the Contractor**").

**RECITALS:**

1. The Department wishes to procure the design and delivery of appropriate quality assurance models for Reception Baseline Assessments which are delivered by the Department’s concession-holders to schools (“the Services”).
2. Following a competitive procurement exercise, the Contractor was selected and has agreed to provide the Services to the Department on and subject to the terms and conditions set out in this Contract.
3. The Department's reference number for this Contract is STA 0122.

**1 Interpretation**

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

|  |  |
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| **“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;  Talat Shams, **Sanctuary Buildings, Great Smith Street** London SW1P 3BT or such other person as the Department may notify to the Contractor from time to time; |
| **“the Contractor’s Contract**  **Manager”** | *\*\*\* name of the Contractors Contract Manager\*\*\** |
| **“Confidential Information”** | means all information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including but not limited to information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and commercially sensitive information which may be regarded as the confidential information of the disclosing party; |
| **"Contracting Authority"** | any Contracting Authority as defined in Regulation 2) of the Public Contracts Regulations 2015 other than the Department; |
| **“Contract Period”** | means the period set out in Clause 2; |
| **"Contractor Personnel"** | all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor; |
| **"Department's Intellectual Property Rights”** | means all Intellectual Property Rights comprised in or necessary for or arising from the performance of the Services; |
| "**Environmental Information Regulations"** | the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued 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; |
| **"Information"** | has the meaning given under section 84 of the Freedom of Information Act 2000; |
| **"Intellectual Property Rights/IPR"** | means any copyright, rights in designs, database rights, domain names, trade marks, service marks, patents or any applications for any of the foregoing, know-how or similar rights or obligations (whether registrable or not) including Moral Rights as defined in Chapter IV of the Copyright, Designs and Patents Act 1988; |
| **“IP Materials”** | means the materials referred to in Clause 8, in which the IPR vest in the Department; |
|  |  |
| **"Personal Data"** | shall have the same meaning as set out in the Data Protection Act 1998; |
| **“Price”** | means the price (excluding any applicable VAT) payable to the Contractor by the Department under the Contract, as set out in Schedule 2 for the full and proper performance by the Contractor of its obligations under the Contract; |
| **“Property”** | means the property, other than real property, issued or made available to the Contractor by the Department in connection with the Contract; |
| **“Quality Assurance Models”** | The quality assurance models which the Department commissions the Contractor to design, develop and deliver pursuant to this Contract; |
| **"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; |
| **“Services”** | the Services to be delivered by the Contractor to the Department as set out in the Specification of Service Requirement in Schedule 1 and in accordance with this Contract; |
| **"SME"** | means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and any subsequent revisions; |
| **"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. References to a person include any individual, firm, unincorporated association or body corporate.

**2 Commencement and Continuation**

2.1 This Contract shall commence on 1st July 2015 and shall terminate on 31st January 2016 (“the End Date”) unless extended in accordance with Clause 2.2 or terminated in accordance with Clause 10 (“Contract Period”).

2.2 The Department shall in its sole discretion, be entitled to extend the Contract from the End Date for a further period of up to 12 months on 4 weeks notice in writing to the Contractor.

**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.

**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.

**3.4** The Contractor shall comply with the Cabinet Office Supplier Assurance Framework in its performance of the Contract and with the Department’s security requirements as set out in the Specification of Service Requirement in Schedule 1

**3.5** The Contractor shall prepare an Exit and Transition Plan for approval by the Department no later than two months after the start of the Contract Period.

**4 Payment**

In consideration of the Contractor’s performance of its obligations under the Contract,

the Department shall pay the Price in accordance with the provisions of Schedule 2.

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

**5.1** The Department shall notify the Contractor of any 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.

**5.3** No changes proposed under this clause 5 will take effect unless recorded and approved in writing by the Department.

**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 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.

**7.5** 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.

**7.6** 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** All Intellectual Property Rights in any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

(a) furnished to or made available to the Contractor by or on behalf of the Department;

(b) prepared by or for the Contractor for use in relation to the performance of its obligations under the Contract; or

(c) the result of any work done by the Contractor, the Contractor Personnel or any Sub-Contractor in relation to the provision of the Services (together with clauses 8.1 (a) and (b)) (the "**IP Materials**")

shall vest in the Department and the Contractor shall not, and shall ensure that the Contractor Personnel shall not, use or disclose any IP Materials without the prior written consent of the Department save to the extent necessary for performance by the Contractor of its obligations under the Contract. For the avoidance of doubt, the Quality Assurance Models shall form part of the IP Materials.

**8.2** The Contractor hereby assigns to the Department, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 8.1(b) and (c). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation and do all acts as are necessary to execute this assignment.

**8.3** The Contractor shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract.

**8.4** The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Department a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Department an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Department to sub-license, transfer, novate or assign to other Contracting Authorities or to any other third party supplying goods and/or services to the Department.

**8.5** The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified the Department and the Crown from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Department or the Crown may suffer or incur as a result of or in connection with any breach of this clause 8.5, except to the extent that any such claim results directly from:

(a) items or materials based upon designs supplied by the Department; or

(b) the use of data supplied by the Department which is not required to be verified by the Contractor under any provision of the Contract.

**8.6** The Contractor grants to the Department a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Department reasonably requires in order to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

**8.7** The Contractor shall ensure that any copyright materials produced by or on behalf of the Contractor for the benefit of the Department shall be marked with the following copyright notice "© Crown Copyright 2015".

**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 any 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

**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.

**10 Termination**

**10.1** This Contract may be terminated by either party giving to the other party at least 30 days’ prior 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, 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 his/their 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 his/their 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.

**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

**12.1.2** not 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:

**12.2.1** such 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);

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

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

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

**12.2.5** it 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 sign a confidentiality undertaking before commencing work in connection with the 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 Authority, 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 his 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.

**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.

**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 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.

**18 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.

**19** **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.

**20 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.

**21 Notices**

Any notices to be given under this Contract shall be delivered personally or sent by post or by facsimile transmission to the Contract Manager (in the case of the Department) or to the address set out in this Contract (in the case of the Contractor). Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, if sent by post, 48 hours after posting or, if sent by facsimile transmission, 12 hours after proper transmission.

**21 Dispute resolution**

**22.1** 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.

**22.2** Any dispute not capable of resolution by the parties in accordance with the terms of Clause 22 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

**22.3** 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.

**22.4** The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Contractor and the Contractor Personnel shall comply fully with the requirements of the Contract at all times.

**23 Discrimination**

**23.1** 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.

**23.2** The Contractor shall take all reasonable steps to secure the observance of Clause 23.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

**24 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 \*\*\**insert full name*

State for Education *of Contractor*\*\*\*

Signature Signature

Name in CAPITALS Name in CAPITALS

Position in Organisation Position in Organisation

Address in full Address in full

Date Date

**Schedule 1:**

**Schedule 1**

**TO BE POPULATED WITH SPECIFICATION**

End of schedule 1

\*\*\*

**Schedule 2**

**Payment and VAT**

1. The Contractor shall submit invoices to the Department in respect of the Price, in accordance with the Payment Schedule in annex 2 to this Schedule 2.

2. The Contractor shall add VAT where applicable to the Price at the prevailing rate and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to show VAT on an invoice, the Department will not, at any later date, be liable to pay the Contractor any additional VAT.

3. All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Department in writing.

4. The Department shall pay all sums due to the Contractor within 30 days of receipt of a Valid Invoice. The Department shall not be responsible for any delay in payment caused by an incomplete or illegible invoice.

5. A Valid Invoice is one which:

1. Is submitted within the timescales and to the address prescribed by the Contract;
2. Is for the correct sum in respect of goods/services supplied to the required quality and any applicable VAT;
3. Includes the date, Contractor’s full name, address and bank details and the title of the Contract; and
4. quotes the relevant Purchase Order number/contract reference.

6. Valid Invoices should be submitted for payment to the following address:

[insert details]

7. Any late payment of undisputed invoices by the Department will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank plc.

8. If the Contractor enters into a Sub-Contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the Sub-Contract which requires payment to be made of all sums due from it to the Sub-Contractor within 30 days from the receipt of a Valid Invoice.

##### 9. The Contractor shall indemnify the Department on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Department at any time in respect of the Contractor’s failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 5 shall be paid by the Contractor to the Department not less than 5 Working Days before the date upon which the tax or other liability is payable by the Department.

10.The Contractor shall maintain full and accurate accounts for the Services against the and 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.

11. 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.

**N.B TO ANNEX – PAYMENT SCHEDULE WHICH SETS OUT DELIVERABLES, DUE AND PAYMENT DATES**

# End of Schedule 2

* + - * 1. Schedule 3 – Annex 1: Template for Exit Management Plan

*[Text in italics below is drafting guidelines for the Supplier]*

1. Document History (Section 1)

**Document location**

*[Insert document location details.]*

**Revision history**

*Insert details of the version history of the document. The initial Exit Management Plan is to be agreed by the time of Agreement signature, even if it needs subsequently to be amended to take account of changes to the Services or the System.]*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Version Number** | **Issue/Revision Date** | **Previous Revision Date** | **Summary of Changes** | **Changes Marked** |
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**Required approvals**

*[Insert details of the required approvals.]*

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** | **Title** | **Date of Issue** | **Version** |
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**Distribution**

*[Insert distribution list.]*

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| **Name** | **Title** | **Date of Issue** | **Version** |
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1. Purpose (Section 2)
   1. This Exit Management Plan sets out the Parties’ obligations with regard to facilitating the orderly transfer of the Services during the Exit Phase and the treatment of any relevant assets, materials, software, data, subcontracts and people to a Successor Operator (including STA), on the expiry or termination of the Agreement or of any Service.
   2. This Plan will cover ‘Routine’ Exit (including Exit on Termination for Convenience), Exit for Termination and Exit for Partial Termination including the various scenarios that may lead to Termination identifying the implications of these and the actions that shall be required to be undertaken as a result of Termination at the various stages.
   3. Within each Exit scenario, there are two different types of exit activity:
      1. those that are foreseeable, predictable and capable of being planned in detail as it relates to the “fixed” activities that will always take place on exit, irrespective of the cause or nature of the exit, and
      2. individual services that may or may not be used, depending on the cause or nature of the termination, the point in the test cycle when termination occurs and the appetite of any incoming supplier to take advantage of them.
   4. This Exit Management Plan is divided into the following principal sections:

Section 1: Document History

Section 2: Purpose

Section 3: Exit Management Structures

Section 4: Required actions

Section 5: Timetable

Section 6: Charging arrangements

1. Exit management Structures (Section 3)
   1. This Section 3 describes the management structures and processes to be followed by the parties in order to facilitate the orderly transfer of the Services to a Successor Operator.

*[Describe the governance arrangements that will apply to any exit from the Agreement. The parties need to legislate in advance for exit project meetings, liaison with potential Successor Operators, content and frequency of progress reports and so on. Effective project management and reporting during the Exit Phase is regarded by STA as important as project management of the initial implementation and normal “business as usual” governance during the term of the Agreement.*

*It may be the case that different structures are required to deal with “routine” and “emergency” exit. A “routine” exit would be one such as contract expiry or termination for convenience by STA, where there is ample time to plan ahead. An “emergency” exit would be one where STA is terminating for non-performance or force majeure, which might therefore mean that timescales need to be shortened and reporting increased, if the Supplier is unable to provide the full level of exit assistance that might ideally be required.]*

**Exit Project Board**

*[State the composition of the Exit Project board, the frequency and agenda for its meetings, and the path for escalation of unresolved issues.]*

**Exit Project Reporting**

*[State the reports required for the purposes of effective monitoring and management of the Exit Project, including their content, frequency and distribution.]*

1. Required Actions (Section 4)
   1. This Section 4 describes the specific actions required in order to facilitate the orderly transfer of the Services to a Successor Operator. It is divided into the following sub-sections:

Subsection 4.2: Supplier Assets

Subsection 4.3: Systems and Software

Subsection 4.4: Data

Subsection 4.5: Contracts

Subsection 4.6: Documentation

Subsection 4.7: Training and knowledge transfer

Subsection 4.8: Staff matters

*[Drafting note: this section will contain the real substance of the Exit Management Plan, in terms of the specific action required, assets to be transferred, contracts to be novated, training to be provided and so on. This template sets out the main headings that STA would normally expect to be addressed – there may of course be others that are specific to the particular engagement – but the whole section needs to be populated by the parties. It is emphasised that these obligations will not solely be Supplier responsibilities. Where there are any dependencies to be fulfilled by STA or the Successor Operator, these must be clearly spelled out as well.]*

**Supplier Assets (Subsection 4.2)**

*[List the principal assets (including computer hardware and other equipment) used wholly or mainly in the provision of the Services, and indicate in each case whether these are “exclusive assets” or “non-exclusive assets”. By “exclusive assets”, we mean any assets that are used solely for the provision of services to STA, which can therefore be transferred to STA if STA so wishes. By “non-exclusive assets”, we mean assets that are not used solely for STA. Indicate in each case whether the asset in question will be assigned to STA. If any asset is not to be assigned to STA, but STA wishes to continue to have access to and use of it (e.g. on a rental or licence basis), the terms of such use will be agreed and documented here.]*

**Systems and Software (Subsection 4.3)**

[Describe the specific steps required to ensure the effective migration of systems from the Supplier to a Successor Operator. These might include, for example, requiring the Supplier to analyse and provide information about capacity and performance requirements, generate computer listings of all relevant Source Code, and assist with parallel running, as well as the physical transfer of hardware and of copies of software. Deletion of STA software from Supplier systems will also be relevant.

The following list of bullet points is taken from the Exit Schedule that forms part of the model ICT Services Agreement published by OPSI and is (c) Crown Copyright. The Supplier and STA will agree a finalise the narrative against each bullet using information provided in the bidder’s successful tender

* + - ceasing all non-critical Software changes (by agreement with STA);
    - notifying subcontractors of procedures to be followed during the Exit Phase and providing management to ensure these procedures are followed;
    - providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Successor Operator after the Exit Phase;
    - delivering to STA the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the Exit Phase;
    - providing details of work volumes and staffing requirements over the 12 month period immediately prior to the Exit Phase;
    - with respect to work in progress as at the end of the Exit Phase, documenting the current status and stabilising for continuity during transition;
    - providing STA with any problem logs which have not previously been provided to it;
    - providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re‑writing and implementing these during and for a period of 12 months after the Exit Phase;
    - providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Exit Phase;
    - reviewing all Software libraries used in connection with the Services and providing details of these to the Successor Operator;
    - making available to the Successor Operator expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by STA (acting reasonably) at the time of termination or expiry;
    - assisting in establishing naming conventions for the new production site;
    - analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
    - generating a computer listing of all relevant Source Code in a form and on media reasonably requested by STA;
    - agreeing with STA a handover plan for all of the Supplier’s responsibilities as set out in the STA Security Policy as set out in Schedule 12, and co-operating fully in the execution of the agreed plan, providing skills and expertise of a suitable standard;
    - delivering copies of the production databases (with content listings) to the Successor Operator’s operations staff (on appropriate media) as reasonably requested by STA;
    - assisting with the loading, testing and implementation of the production databases;
    - assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
    - in respect of the maintenance and support of the System, providing historical performance data for the previous 12 months prior to the Exit Phase;
    - assisting in the execution of a parallel operation of the maintenance and support of the System until the end of the Exit Phase or as otherwise specified by STA;
    - providing an information pack listing and describing the Services for use by STA in the procurement of replacement Services;
    - answering all reasonable questions from STA or its Successor Operator regarding the Services;
    - agreeing with the Successor Operator a plan for the migration of all STA Data and databases, and co-operating fully in the execution of the agreed plan, providing skills and expertise of a reasonably acceptable standard;
    - providing access to the Successor Operator until the expiry of six months after the Exit Phase for the purpose of the smooth transfer of the Services:
    - to information and documentation relating to the Services that is in the possession or control of the Supplier or its subcontractors (and the Supplier agrees and shall procure that its subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
    - following reasonable notice and during the Supplier’s normal business hours, to members of the Supplier’s personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Subcontractors.

**Data (Subsection 4.4)**

*[Describe the specific steps required to ensure the effective transfer of data from the Supplier to a Successor Operator. These might include, for example, agreement of interfaces, formats and security requirements for data transfer, as well as the actual physical or electronic transfer itself, and arrangements for the deletion of data from the Supplier’s systems at a future point.]*

**Contracts (Subsection 4.5)**

*[List the material contracts and subcontracts that the Supplier has with third parties, and which have to be assigned or novated to the Successor Operator in order to ensure continuity of service. State in each case exactly what the subject-matter is, and what steps are to be taken by the Supplier to ensure that STA continues to receive the benefit of the arrangement.]*

**Documentation (Subsection 4.6)**

*[List the documentation that STA requires to be provided to the Successor Operator, including business process manuals, software documentation, security and quality plans etc. This section might also include requiring the Supplier to provide assistance to examine all ICT, operational and business processes under the existing agreement, and revising them as necessary for use by the Successor Operator after the Exit Phase.]*

**Training and knowledge transfer (Subsection 4.7)**

*[Describe what the Supplier will do in terms of the provision of training and knowledge transfer to the Successor Operator.]*

**Staff matters (Subsection 4.8)**

*[Specify which Supplier staff, if any, are expected to transfer across to the Successor Operator, and provide any relevant information required for TUPE and HR purposes.]*

1. Timetable and milestones (Section 5)

*[The timetable for the exit and transition project, including completion of the specific actions and dependencies set out in Section 4, will be set out here including a detailed exit project plan. This section is to detail any specific milestones that are to be achieved as part of the Exit Project, together with the relevant completion criteria.*

1. Charging Arrangements (Section 6)

*[The agreed basis of charging for all aspects of exit assistance, and any other financial arrangements such as apportionment of annual payments made in advance under Transferring Agreements.]*

# End of Schedule 3