



Trustee and Governor Recruitment and Onboarding Support

Lot 2

Maintained School Governor & Academy Local Governing Body Recruitment

ITT_967

Con_12950

This contract is made on day of 20

- 1 THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DFE**"); and
- 2 Education and Employers Taskforce - registered in England and Wales under number 06886359 whose registered office is Quantum House, 22-24 Red Lion Court, Fleet Street, London, EC4A 3EB (the "**Contractor**")

each a "**Party**" and together the "**Parties**".

It is agreed that:

1. this contract, together with the attached schedules and annexes, collectively form the "**Contract**"; and
2. if there is a conflict between the provisions of the clauses of the Contract and the provisions of the schedules, the following order of precedence shall apply:
 - (a) schedule 2 (Terms and Conditions);
 - (b) schedule 1 (Specification);
 - (c) schedules 3 to 9; and
 - (d) schedule 10 (Contractor's Solution).

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

SIGNED by the CONTRACTOR acting by

Authorised Signatory [REDACTED]

Full Name [REDACTED]

Position [REDACTED]

Date 23 March 2022

SIGNED by DFE acting by

Authorised Signatory [REDACTED]

Full Name [REDACTED]

Position [REDACTED]

Date 23 March 2022

Table of Contents

Contract Schedules

Schedule 1	Specification
Schedule 2	Terms and Conditions
Schedule 3	Financials
Schedule 4	KPIs, Service Levels, Service Credits and Performance Measures.
Schedule 5	Implementation Plan
Schedule 6	Change Control Procedure
Schedule 7	Key Personnel and Key Sub-Contractors
Schedule 8	Processing Data (Data Protection Act)
Schedule 9	Commercially Sensitive Information
Schedule 10	Contractor's Solution
Schedule 11	Data Handling and Systems Assurance (Security)

Schedule 1

SPECIFICATION

1 Introduction/Background

1.1 The Government's vision, as set out in the [Governance Handbook](#) and other Department guidance to which the handbook signposts, is to see robust and effective governance in every school and academy trust. As the first line of accountability, the Department recognises that high quality effective and ethical governance is key to success in our school system and for the future of children and young people.

1.2 Government has funded several organisations over recent years to deliver governance recruitment and matching services for maintained schools and academies in England. The Department currently funds two programmes, [Inspiring Governance](#) delivered by Education and Employers, and [Academy Ambassadors](#) delivered by New Schools Network. The contracts for both these programmes end in March 2022.

1.3 Given the emphasis on the strategic role of the governing board, the Department recognises the importance of continuing to fund governor and trustee recruitment services, in doing so, ensuring the appointment of appropriately skilled and diverse people in order to meet the demands of the governance role.

1.4 The Department is therefore looking to award contracts to fund the delivery of governor and trustee recruitment and matching services along with a high quality onboarding service and expert guidance for all those recruited.

1.5 Contracts will run for an initial period of two years from April 2022 to March 2024 with provision to extend for a further year. The Department wants to encourage applications from a range of providers, including consortium bids to promote evidence-based innovative solutions and support the development of a sustainable market. We are looking to fund both small and large organisations, including schools and trusts with excellent governance. To this end, the procurement has two lots:

Lot 1 – bids of contract value to a maximum of £650,000 per annum for the years 2022-23 and 2023-24 (inclusive of all VAT that may be chargeable) to deliver a national service to recruit and match trustees and members (see Document 6 for detail on balance of numbers) to the boards of Single Academy Trusts (SATs) and to Trusts with multiple academies (MATs), along with a high quality onboarding service and expert guidance for all those recruited.

Lot 2 – bids of contract value to a maximum of £550,000 per annum for the years 2022-23 and 2023-24 (inclusive of all VAT that may be chargeable) to deliver a national service to recruit governors to the boards of Local Authority maintained schools and academy Local Governing Bodies, along with a high quality onboarding service and expert guidance for all those recruited.

1.6 This procurement is being carried out adopting the OJEU open procedure and is subject to Public Contract Regulations 2015 (PCR 2015).

2 Purpose

2.1 Schools and academies need governing boards that have a balance and diversity of knowledge, skills and experience to enable them to be effective. Governors and trustees have a huge opportunity to make a positive impact, and we need even more people to come forward to invest in their local community and help shape young people's futures.

2.2 Evidence indicates that when the leadership and management of a school or academy is less than good, a common underlying weakness is the failure of governors and trustees to hold school and trust leaders to account. With the growth of an increasingly school-led system

this means that the governance role has become even more important and that governing boards are likely to face increasing challenges.

2.3 Through procuring the services outlined in this specification our aim is to help governing boards recruit and retain people with the right skills and from a range of backgrounds in order to govern well. In doing so, we aim to secure the improvements and efficiencies we need schools and trusts across the system to achieve over the coming years.

2.4 References in the specification to 'governing boards' should be read to include both the governing bodies of maintained schools and the trust boards of academies and multi-academy trusts, as well as any subsidiary governance structures, including LGBs, that may be put in place.

2.5 We have defined the key features of effective governance in the [Governance Handbook](#); the [Competency Framework for Governance](#) sets out the knowledge, skills and behaviours that school and academy governing boards need to be effective; and the [Governance structures and roles](#) provides an explanation of how governing boards of maintained schools and academy trusts are structured with descriptions of the various roles and responsibilities.

3 Scope

3.1 Our priorities in funding governance recruitment and onboarding services are outlined below at Table 1.

Table 1.

Scope: Governance Recruitment and Onboarding Support	
3.2.	To provide a recruitment offer for governors, trustees (and members where appropriate), enabling all state funded educational institutions in England that provide education to pupils of compulsory school age, to have access to high quality people with the commitment, skills and knowledge to help secure effective governance. This includes all establishments that are maintained by a local authority and those establishments with whom the Secretary of State has entered into academy arrangements, including primary and secondary maintained schools and academies, special schools and special academies, free schools, University Technical Colleges (UTCs), studio schools and alternative provision institutions that are LA maintained or are academies. It does not cover further and higher education providers such as 6th Form Colleges, Further Education Colleges and Higher Education Institutions or educational institutions outside of England.
3.3.	To provide greater support and target resources to those governing boards in most need, for example: schools and academies with less than good Ofsted judgements; trusts deemed by the Department as 'high need'; schools and trusts with identified financial concerns; and schools and academies where governance is identified as weak. To achieve this, we have set key performance indicators (KPIs) (see document 6), directing support to those schools, academies and trusts that the Department identify are most in need. We will be looking to appoint providers who demonstrate their understanding of high needs boards, and who clearly document what procedures they will put in place to address this key policy intent of the programmes.
3.4	To maximise the impact of those volunteers introduced to boards through high-quality onboarding and effective screening and matching.
3.5.	To help create diverse boards, made up of volunteers from a wide range of backgrounds and cultures, with suppliers responsible for delivering against ethnicity and age KPIs (see document 6).
3.6	To provide tailored support to trusts of all sizes, including SATs and medium and large trusts with multiple academies, recruiting and placing high-calibre individuals with the requisite business and professional skills to help grow successful academy groups sustainably.

3.7.	To ensure those new to governance receive high quality onboarding support and expert guidance, so that they are suitably equipped with the knowledge and skills they need to begin to make a positive impact on boards.
3.8.	To promote the importance of governance and generate demand from schools and trusts for skilled board members, especially for those schools and trusts in most need where governance is weak.
3.9.	To promote the importance of governance and generate increased support from employers across the public and private sector of the benefits to their organisation of their employees being involved in school governance.
3.10.	To build in continuous improvement and lessons learned throughout the contract lifetime to ensure that findings are fed into delivery on an ongoing basis.
3.11.	To build-in supplier evaluation as a minimum requirement, to provide a level of assurance on the overall quality and effectiveness of the programmes.
3.12.	Through no/low cost marketing and communication strategies, suppliers must ensure that their services and/or programme secures a high profile across the education sector.

4 Requirements: Trustee and Governor Recruitment Services

4.1 To achieve our aim of helping governing boards to recruit and retain people with the right skills and from a range of backgrounds to support effective governance, lead providers bidding for lots 1 and 2 will, as a minimum, need to meet the requirements set out in Table 2 below.

Table 2.

Requirements: Trustee and Governor Recruitment Services	
4.2. Perceptions of Governance	
a.	Increase public perceptions and celebrate the valuable role played by those in governance as a challenging but important tool in delivering world-class education in schools and trusts.
b.	Work with schools and trusts to help foster a culture change towards governance, highlighting the benefits and positive impacts effective governance can have and how this can be improved through recruiting high-calibre volunteers.

4.3. Service Delivery: Supply

- a. Identify and recruit suitable, high-calibre, skilled volunteers across all areas of England who have the commitment to serve on governing boards. With a strong prioritisation towards supporting those governing boards most in need, as identified by the Department (DfE) and defined through KPIs.
- b. Ensure that all volunteers matched to vacancies are suited to the boards' requirements and have the relevant skills, expertise, behaviours and commitment to fulfil the role on offer. The board (recruiter) is responsible for ensuring that the proposed appointee is aware of any legal or statutory requirements. It is also the responsibility of the board (recruiter) to conduct Disclosure and Barring Service (DBS) checks, manage conflicts of interest, undertake any other checks and take-up of references before appointing the volunteer put forward.
- c. Design and deliver sound and effective, easy-to-use recruitment processes that maximise the impact of the people introduced onto boards through effective gathering of information, screening and matching. Ensuring that processes are proportionately robust to screen out ineligible individuals (as determined in legislation or academy articles of association) and/or unsuitable individuals (for example those who are prohibited, or restricted or those with known extremist views) from being recruited and introduced to schools and trusts, as far as is practicably possible.
- d. Design and deliver a service that is not burdensome for volunteers or boards (recruiters) to use. In doing so, providers will be expected to reduce to a minimum the cost of meeting the majority of boards' needs, increasing the overall volume of placements possible within the resources of the contract and leaving maximum resource available to provide tailored support where it is most needed.
- e. Design and deliver a high-quality onboarding service to help ensure prospective volunteers understand the roles and responsibilities of a governor/trustee, the time commitment required and what will be expected of them in advance of their accepting a position on the board. Suppliers must build in mechanisms to ensure that volunteers confirm their commitment to and understanding of the role before they are able to progress to the matching stage.
- f. Produce high-quality, fit for purpose onboarding materials, guidance and resources which all new and returning governors and trustees recruited are able to access. Provide opportunities for interaction with appointed volunteers through, for example, webinars, online modules, or other innovative and interactive materials.
- g. Ensure that these materials align with the outcomes the DfE wants to achieve as defined by the Governance Handbook, the Competency Framework for Governance, DfE policy, relevant documentation and this tender specification. Through the delivery of this service and these materials, the successful contractor is expected to ensure that all volunteers have the essential skills and knowledge they need as they join a board, and that they feel able to make a positive contribution to the board from the outset. This support will function in tandem with the context-specific induction expected to be provided by boards (recruiters).
- h. Actively maintain volunteer momentum, interest and commitment, through managing volunteer expectations as to the time taken from volunteering to being introduced/appointed to a board. Ensuring that robust processes are in place to seek and monitor feedback from both volunteers and boards and drive continuous improvement.
- i. Help improve the diversity of governing boards through a requirement to recruit volunteers across England who are representative of their community, with a particular focus in recruiting people from a range of diverse backgrounds including ethnicity and age. This is a key priority for the department and we will be looking for providers who can demonstrate an understanding of the challenges here and outline how their procedures will enable fulfilment of this requirement.
- j. Work with the business community, business organisations and professional bodies to convince them of the benefits to them and their employees/members of being involved in governance. In doing so identify high-calibre individuals with a strong interest in helping to improve school and trust governance who are willing to offer their time, experience and expertise in a voluntary/pro-bono capacity. Joining up with the other successful bidder(s) to offer a coordinated package of support for employers and professional bodies in helping

them establish active governance recruitment and support networks within their organisations.

- k. Deliver alumni network support to those volunteers recruited and appointed to help ensure the engagement, commitment, enthusiasm and success of those new to governance, and ultimately improve retention.

4.4. Service Delivery: Demand

- a. Generate the required demand and commitment from governing boards across England (and other appointing and nominating bodies such as sponsors, foundations, dioceses, and local authorities) who are seeking to recruit high-calibre, skilled and experienced people in order to meet the minimum number of volunteers recruited as outlined through the contract KPIs (see Document 6).
- b. Employing their governance expertise, providers must work with boards to understand their differing needs and requirements, with a focus on any skills gaps of the board, to ensure that those volunteers proposed and placed can have the most impact.
- c. Through low/no cost marketing and communication strategies, providers must ensure that the service achieves a high profile across the sector and with relevant stakeholders for example academies and maintained sector, local authorities, dioceses and nominating bodies as well as DfE Regional Schools Commissioner (RSC) and Education and Skills Funding Agency (ESFA) teams, so that potentially interested parties are aware of the service. This will include running an attractive, high-quality website where visitors can learn

<p>more about the service, how it works, the positive impacts of governance, and how prospective volunteers can take forward their interest.</p> <p>d. Develop and maintain a high-quality, efficient service for boards to register their interest in support, minimising any burdens on the board and any nominated lead contact from the board.</p>
<p>4.5. Matching</p> <p>a. Establish and maintain effective and collaborative working relationships with a range of stakeholders, including but not limited to DfE RSC teams, other appointing and nominating bodies such as foundations, dioceses, and local authorities to identify boards where additional support is most needed, in particular those boards deemed high-need as determined in the KPIs (Document 6) and to put forward those volunteers with the relevant and desirable skills, knowledge and characteristics to support boards with the challenges faced.</p> <p>b. Develop a clear and high-quality process for identifying and matching the needs of governing boards with volunteers they have recruited, ensuring that volunteers will enhance the effectiveness of a board if successfully placed. This process should be as efficient as possible to reduce the time for boards to receive suitable candidates and volunteers to be placed on a board.</p> <p>c. Understand and familiarise themselves with the requirements and appointment processes for LA maintained schools with a religious character and trusts comprising academies with a religious character in order to identify those individuals who would meet the additional eligibility criteria to serve as foundation governors/members and ensure they are placed effectively. It is, however, the role of the appointing board to carry out those required tests of religious faith, not the role of the provider.</p> <p>d. Ensure that robust processes are in place to effectively monitor and follow-up un-filled vacancies where volunteers have been matched and introduced to boards, but not placed. Taking prompt action to understand and resolve issues (both from the volunteer and board perspective) and building this into continuous improvement.</p>
<p>4.6. Supplier Collaboration</p> <p>a. Develop and agree a Memorandum of Understanding for how they will work effectively and collaboratively with other providers (where contracts for lots 1 and 2 are awarded to different lead providers) ensuring the services on offer have the highest collective impact and present a coherent offer to schools, academies, trusts, volunteers and employers.</p>
<p>4.7. Key Performance Indicators (KPIs)</p> <p>a. Proactively develop high-quality, innovative processes and services to successfully deliver against the KPIs and Service Level Agreements as outlined at Document 6.</p>
<p>4.8. Staffing</p> <p>a. Develop a staffing model and organisational structure that has the necessary skills, capability, capacity, experience and leadership at every level to deliver the requirements set out in this specification and in order to achieve the KPIs and SLAs as set out in Document 6.</p> <p>b. The contractor will be responsible for identifying, understanding and adhering to any TUPE requirements.</p>
<p>4.9. Transitions</p> <p>a. Develop processes and agreements as relevant with existing suppliers to ensure there is a smooth transition for schools and trusts with vacancies and volunteers that have offered their services from the existing delivery arrangements to the services to be delivered as outlined in this specification. The data that will be passed to the successful bidders by the existing suppliers is set out in Document 12.</p>

4.10. Quality Assurance

- a. Establish and maintain high-quality standards and assurance arrangements for all aspects of the services to be delivered as outlined in this specification, including but not limited to, complaints handling processes and procedures.
- b. Establish robust governance structures to ensure high performance and accountability. This should include as a minimum:
 - I. identifying the key delivery risks with plans for mitigating risks if they materialise;
 - II. having key metrics for measuring the success of the service;
 - III. identifying and managing any conflicts of interest;
 - IV. having a security plan that protects departmental and personal data and adheres to any relevant data regulations as set out in DfE terms and conditions.
- c. Undertake provider-led self-evaluation as outlined in Document 10 and build in continuous improvement and lessons learned throughout the contract lifetime to ensure that findings are fed into delivery on an ongoing basis.
- d. Analyse, assess and share findings of own performance with the DfE in accordance with the schedules set out in Document 10.

4.11 Management Information

- a. Provide management information (MI) to meet the needs of the DfE's contract management processes, for the purposes of quality assurance and achievement against KPIs, and to help improve the DfE's evidence base on the state of governance in schools.
- b. Establish robust and effective processes to collect, track, maintain and share data about the volunteers and boards using their services. The MI required by the DfE is set out in Document 10.
- c. Propose and agree with the DfE, within one month of contract signature, any additional management information (MI) to be collected from volunteers or boards in order to deliver the required services as outlined in this specification. Any additional data collected must not place unnecessary burdens on volunteers or the boards they serve and must be approved by the DfE in advance.
- d. Ensure all management information and other data collected from volunteers and boards is securely collected, stored and shared in accordance with DfE processes and procedures as outlined in Document 10.

4.12. Cost and Value for Money

1. Proposed costs must be based on efficient models of delivery to maximise the overall number of boards supported and individuals onboarded, matched, placed and supported within available resources. This needs to provide a strong return on investment and optimal value for money for the DfE, particularly against the KPIs and SLAs set out in Document 6.

5 Service Levels, Key Performance Indicators (KPIs) and Performance Management

5.1 Each quarter as determined (post contract award), and as requested by the DfE, the contractor will be required to provide data relating to all contract Service Levels and KPIs as outlined at Document 6.

5.2 The DfE shall monitor the Contractor's performance and progress against the Implementation Plan on a quarterly basis and during performance review meetings. The Contractor shall cooperate with the DfE in this regard and provide any information and evidence reasonably required by the DfE within five (5) Working Days of a request being received.

5.3 The Contractor shall appoint a named Performance Manager who will cooperate with the DfE to ensure that the Contract is delivered as specified in the Contract and that Service Levels and KPIs are achieved.

6 Evaluation

6.1 The evaluation requirements that providers will need to factor into the planning of and delivery of the required services are outlined at Document 10.

6.2 The aim of evaluation is to ensure that delivery is meeting the needs of volunteers and boards to achieve the DfE's aims and objectives as set out in the specification. Lessons learned will also inform future policy and delivery.

6.3 The scope and detail of proposed independent evaluation is still being developed. Broadly, this is likely to be a process evaluation focussing on the successes and challenges of the services delivered, as well as some impact evaluation.

6.4 Whilst the DfE will endeavour to ensure that any evaluation activity is proportionate and low burden to all, it is a requirement of the contract that Contractors participate and ensure that volunteers and boards (recruiters) are aware of the importance of engaging in the evaluation and encouraged to respond. It is a condition of contracting that Contractors will be required to commit to supporting continuous improvement by sharing knowledge and experiences of the successes and challenges faced, with the independent evaluator and the DfE.

7 Risk Management and Exit Arrangements

7.1 The Contractor shall develop and maintain a robust risk management process covering all elements of the Service, this shall include but not be limited to the accurate identification of key risks to their programme, an understanding of risk triggers and an effective use of mitigation and contingency planning.

7.2 For consortiums, the lead Contractor shall be responsible for ensuring there are plans in place to ensure business continuity and continuation of contract delivery, including in the event that a member leaves the consortium for any reason, how this gap in service provision will be met and how it will be ensured that the contract continues to be delivered to agreed standards.

7.3 In line with the Exit Management clauses of the DfE terms and conditions – Document 7, the Contractor will within 3 months of the Effective Date, deliver to the DfE, a plan which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the DfE and/or its Replacement Contractor at the end of the Term (an "Exit Plan").

8 Security of Data

8.1 The Contractor must comply with the Data, Systems Handling and Security conditions as set out in the DfE terms and conditions - Document 7.

9 Costs

9.1 Bidders may propose activity costing up to a total of £650,000 for Lot 1 and £550,000 for Lot 2 in each financial year 2022-23 and 2023-24. Costs must be exclusive of all VAT that may be chargeable. Bidders will state clearly whether or not VAT will be charged in the comments section provided in the pricing schedule (Document 5) and if not, note that further funding will not be available should a VAT-able supply claim be made at any later stage.

9.2 Bidders must submit their cost proposals by completing in full the Pricing Schedule – Document 5. This must detail overall contract costs per financial year 2022-23 and

2023-24, clearly separating out the value of any VAT that will be charged in the comments section available.

- 9.3 Bidders must demonstrate that proposed costs are based on efficient models of delivery and provide optimal value for public money, ensuring that all estimated costs are real, auditable and can be justified.
- 9.4 Bidders should also include in the contract costs those costs expected to be incurred as part of the collaboration requirement with other lead providers.
- 9.4 The DfE will require quarterly reporting against spending (dates to be agreed by both parties' post contract award). Payments of costs to the supplier will be made monthly or quarterly by BACS transfer following receipt of a valid invoice.

10 VAT

- 10.1 Please state clearly when submitting prices whether or not VAT will be charged.
- 10.2 Where the contract price agreed between the DfE and contractor is inclusive of any VAT, further amounts will not be paid by the DfE should a vatatable supply claim be made at any later stage.
- 10.3 Where the overall contract price is exclusive of VAT, the DfE will pay any VAT incurred at the prevailing rate (currently 20%). If the VAT rate changes the DfE will pay any VAT incurred at the new rate.
- 10.4 It is the responsibility of Potential Contractors to check the VAT position with HMRC before submitting a bid.

11 Communications and Marketing

- 11.1 All spend on communication and marketing activity within the scope of the Government Communications Service (GCS) Professional Assurance (PASS) controls is restricted. The PASS is the Cabinet Office process through which the DfE gains approval for all communications spend. The Contractor shall base their delivery models on the assumption that only communications and marketing activity that is outside the scope of the PASS, in other words no-cost activity, is permitted. Activities considered in scope of PASS may only be undertaken with prior approval from the Cabinet Office and the DfE. Activity considered in scope of PASS is:
 - 11.1.1 Advertising including TV; radio; digital advertising; outdoor; print; advertorials; recruitment; costs of media; fees and commission for media buying; media planning; creative development and production;
 - 11.1.2 Marketing activities including: design and branding; direct and relationship marketing; customer relationship management programmes; telemarketing; campaign help lines; partnership marketing; sponsorship marketing; field or experiential marketing; merchandising; advertiser funded programming; audio-visual activity; storage and distribution of marketing materials;
 - 11.1.3 Consultation activities including associated publicity, events, resources and materials, research, analysis and evaluation;
 - 11.1.4 Communication strategy, planning, concept and proposition testing and development;
 - 11.1.5 Market research that informs marketing and advertising activity and evaluation of marketing and advertising activity;
 - 11.1.6 Printing and publications;
 - 11.1.7 Events, conferences and exhibitions, including stakeholder, public and internal communication events, but excluding training events;
 - 11.1.8 Public relations (PR) activity; and

- 11.1.9 Digital activity including website and application development; search engine marketing, including pay-per-click; digital display advertising; content partnerships; email marketing; mobile and SMS marketing; interactive online content.
- 11.2 The DfE will engage with the GCS where approval is required for any restricted communications and marketing activity, only then will the Contractor be able to apply to undertake in scope activity as outlined in paragraph 12.1. PASS approvals will be limited to the proposed specific activity and the Contractor must seek prior approval for any other proposed activity from the DfE.
- 11.3 Therefore, the Contractor shall base their delivery models on the assumption that only communications and marketing activity that is outside the scope of the PASS, in other words no-cost activity, is permitted. Examples of such activities are:
 - 11.3.1 Non-paid social media posts;
 - 11.3.2 Email campaigns;
 - 11.3.3 Webinars/ online engagement events;
 - 11.3.4 networking, engagement, and other business development activity related to the delivery of the required services for governor and trustee recruitment and induction support .
- 11.4 The Contractor shall utilise permitted Communications & Marketing activity to raise awareness of and increase demand for the governor and trustee recruitment and induction support programmes. This should be done through engaging sector stakeholders, schools, trusts, employers, employees and individuals and providing a platform to facilitate registrations. The Contractor must be flexible and proactive in adapting their delivery to align with wider DfE Communications and Marketing activity and Cabinet Office guidance. This will be in line with any changing landscapes to governance, the DfE and government priorities.
- 11.5 The Contractor will be required to develop a Communications & Marketing plan, evidencing alignment with the requirements set out above, which will require sign-off by the DfE. The DfE may request adaptations in reaction to changing landscapes should they occur. The Communications & Marketing plan must, as a minimum, include:-
 - 11.5.1 A list of all proposed activities, inclusive of events (virtual or physical) and marketing activities;
 - 11.5.2 A clear outline of the cost (if applicable) associated to each proposed marketing activity (agreement with the DfE will be required prior to commencement of any marketing activity); and
 - 11.5.3 A clear timeline of when each activity will be conducted.
- 11.6 In the event that DfE does not approve the activity referenced in 12.5.1 the Contractor shall be required to continue to deliver the Service using other approaches that do not require PASS clearance.
- 11.7 The Contractor shall adhere to government guidelines when designing marketing materials. Guidelines will be provided upon award of contract and will be updated regularly where needed.
- 11.8 Where the Contractor plans to use language in communications that has not previously been signed off by the DfE, the Contractor must submit the marketing materials 5 working days ahead of publication for the DfE to review. The DfE will provide comments and or clearance within 3 days. In the event the DfE expects the Contractor to make changes, these must be carried out with the marketing materials resubmitted to the DfE for clearance before publication.
- 11.9 The Contractor shall submit all media plans and materials (e.g. press releases, media interviews or media statements) for clearance by the DfE's press office. These materials / plans should be sent at least 48 hours in advance (not including weekends)

of their proposed use. The Contractor shall take on board all required amendments from the DfE press office.

- 11.10 The Contractor shall design and host (as a minimum) a digital landing page that provides volunteers and boards with thorough information on the programme/services, and a clear step-guide on how to register an interest and sign-up (see Digital Delivery Standards for further requirements).
- 11.11 The Contractor must ensure Management Information relating to the Communications & Marketing service is captured and reports are made available to the DfE at agreed times (see Document 6 – example reporting templates).
- 11.12 When requested by the DfE, the Contractor shall provide further analysis and evaluation of its Communication & Marketing activities, including insights on which channels are the most effective to raise awareness and increase registrations. The Contractor's analysis shall also include intelligence on volunteers and boards perceptions and behaviours towards governance. The Contractor shall provide ideas and recommendations on how best to positively influence the sector.
- 11.13 To maximise on raising awareness of the DfE funded governor recruitment and onboarding services, the DfE will carry out some DfE-led communications and marketing activities. The DfE will do this by utilising its own network of stakeholders, commissioning all no-cost communications and marketing activities available to its disposal and, at its own discretion and subject to approvals. The Contractor shall not seek to place any reliance on such DfE led awareness raising activity within their tender submission.

12. Digital Delivery Standards

- 12.1 At DfE we follow [government design principles](#) to ensure that we develop and deliver digital experiences to the highest quality.
- 12.2 The Contractor must share their work with DfE early and often to ensure these expectations are being met and to gain guidance where needed. <https://www.gov.uk/guidance/government-design-principles#do-less>
- 12.3 The Contractor must ensure the elements they are responsible for delivering are presented to users in a way that creates an accessible joined up service and experience with the DfE central digital service, i.e. consistent language.
- 12.4 Testing must be carried out with representative users of the service including those who are low on the digital inclusion scale, have impairments or are from Remote and Disadvantaged Areas. Insight from the Contractor's user testing, as well as feedback from users of the live service, must be shared with DfE and used to develop, resolve issues and continually improve the services.
- 12.5 The Contractor will also be required to audit their compliance with WCAG 2.1 level AA accessibility requirements and identify opportunities to improve accessibility as part of testing, feedback, and continuous improvement.

Branding considerations and consistent language

- 12.6 Working closely with DfE the Contractor is required to ensure branding and language are used consistently throughout the full service, e.g. on communications, making it clear to users who they are communicating with and keeping them orientated within the journey, regardless of the channel being used.
- 12.7 Where attachments, downloadable PDFs or print-friendly versions are provided by the Contractor then in addition to the HTML content, the Contractor shall ensure they are accessible by having a logical structure based on tags and headings, meaningful

document properties, readable body text, good colour contrast and text alternatives for images. More information on [accessible PDFs](#) is available on GOV.UK and at [Microsoft](#).

Communications and notifications

- 12.8 Notifications to users must be triggered at the right place in the journey to satisfy the needs of end users.

GDPR compliance

- 12.9 Where personal data is held by the Contractor, it must comply with GDPR requirements, notifying users of what data is being held, who has access to it and how to change permissions on its use. Further details regarding GDPR can be found in the Contract terms and conditions Schedule 8.

User feedback and analysis

- 12.10 The Contractor shall provide opportunities for users to give on-demand feedback on their elements of the service via digital and other channels e.g. via service support, complaints processes, phone, feedback forms.
- 12.11 The Contractor shall detail their process for reviewing user feedback, ensuring issues are communicated to DfE as appropriate and resolved in a timely manner. The Contractor shall set out their approach to achieve continuous service improvement in consultation with DfE.

Platform requirements and future proofing

- 12.12 Suitable assurance certification needs to be provided in the form of ISO2700 or equivalent. As a minimum the Contractor shall provide evidence that it holds and thereafter maintains Cyber Essentials certification.
- 12.13 The Contractor must ensure that all digital elements delivered as part of their Service and any Ordered Services, including by any Delivery Partners:
 - 12.13.1 undergo and pass a [penetration test](#) before the launch date and periodically thereafter for the lifetime of the platform.
 - 12.13.2 have operational security processes in place.
 - 12.13.3 have a documented process for managing source code.
 - 12.13.4 have a documented process for changing, upgrading or deploying new versions of the software.
 - 12.13.5 provide evidence that these activities have been conducted, highlighting the risks found and mitigations applied.
- 12.14 Perform assurance processes iteratively and continuously throughout the platform's lifecycle. Assurance is conducted throughout the delivery phase. The Digital Service Standard encourages an Agile style of delivery where demos (rather than slide decks) of working software and prototypes are given frequently. This is a key part of our governance process and substantially reduces the burden of more formal engagements.

Schedule 2

Terms and Conditions

CONTENTS

CLAUSE

1	DEFINITIONS AND INTERPRETATION
2	TERM
3	THE SERVICES
4	CONSORTIA
5	TRANSFER AND SUB-CONTRACTING
6	PERSONNEL
7	TUPE
8	CHARGES
9	TAX AND VAT
10	PREVENTION OF CORRUPTION
11	DISCRIMINATION
12	INTELLECTUAL PROPERTY
13	PROCESSING DATA, (DATA PROTECTION ACT)
14	DATA HANDLING AND SYSTEMS ASSURANCE (SECURITY)
15	PUBLICITY AND PROMOTION
16	CONFIDENTIALITY
17	FREEDOM OF INFORMATION
18	OFFICIAL SECRETS ACT AND FINANCE ACT
19	LIABILITY
20	WARRANTIES AND REPRESENTATIONS
21	FORCE MAJEURE
22	MONITORING AND REMEDIATION
23	STEP IN RIGHTS
24	TERMINATION
25	RETENDERING AND HANDOVER
26	EXIT MANAGEMENT
27	AUDIT
28	ENTIRE AGREEMENT
29	PARTNERSHIP
30	WAIVER
31	CHANGE CONTROL
32	COUNTERPARTS
33	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
34	CONFLICTS OF INTEREST
35	FURTHER ASSURANCE
36	NOTICES
37	DISPUTE RESOLUTION
38	GOVERNING LAW AND JURISDICTION

1. DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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

“Commercially Sensitive Information” means the information set out in schedule 1 comprising the information of a commercially sensitive nature relating to:

- (a) the Price;
- (b) details of the Contractor's Intellectual Property Rights; and
- (c) the Contractor's business and investment plans

which the Contractor has indicated to DFE that, if disclosed by the Authority, would cause DFE significant commercial disadvantage or material financial loss.

“Confidential Information” (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:

- (i) the Disclosing Party Group; or
- (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, Model Services Contract Combined Schedules v1.09A 10 know-how and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above, but not including any Information which:
 - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a nonconfidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing

Party or otherwise prohibited from disclosing the information to the Recipient;
(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; Model Services Contract Combined Schedules v1.09A 11

(iv) was independently developed without access to the Confidential Information; or

(v) relates to the Supplier's:

(1) performance under this Agreement; or

(2) failure to pay any Subcontractor as required pursuant to Clause 15.15(a) (Supply Chain Protection);

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

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

(a) signed by all the Consortium Members as at the Effective Date; and

(b) adhered to by Consortium Members who join the Consortium after the Effective Date by signing a Deed of Adherence

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

"Consortium Member" means a member of a Consortium (if any).

"Contractor Equipment" means the Contractor's ICT equipment.

"Contract Period" means the start and end date of the contract as set out in Clause 2 subject to any extensions.

"Contractor's Solution" means the Contractor's proposal submitted in response to the DFE's invitation to tender attached at schedule 10.

"Contracts Finder" means the Government's publishing portal for public sector procurement opportunities.

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

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

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

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

"Default" means breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Personnel in connection with the subject-matter of the Contract and in respect of which such Party is liable to the o" means any premises owned by, leased or hired to or otherwise controlled by DFE or which DFE nominates as such by notice in writing to the Contractor.

“DFE Security Standards” means the security standards as set out in schedule 11

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

“Dispute” means any dispute between the Parties in connection with the Contract.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

“DPA” means the Data Protection Act 2018

“Effective Date” means **1 April 2022**

“EIR” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to them.

“Employment Liabilities” means all actions, proceedings, costs (including reasonable legal costs), losses, damages, fines, penalties, compensation, awards, demands, orders, expenses and liabilities connected with or arising from all and any laws including, without limitation, directives, statutes, secondary legislation, orders, codes of practice, contractual obligations and other common law rights whether of the European Union, United Kingdom or any other relevant authority relating to or connected with:

- (a) the employment and dismissal of employees (including their health and safety at work); and
- (b) the engagement, use and termination of individuals other than employees who provide services (including their health and safety at work),

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

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

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

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

“General Anti-Abuse Rule” means:

- (a) the legislation in Part 5 of the Finance Act 2013; and

- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.

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

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

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

“ICT” means information and communications technology.

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

“Initial Term” means the period from the Effective Date to **31 March 2024**

“Intellectual Property Rights” means patents, inventions, trade-marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade and/or business names, rights in confidential information and know how, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

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

“KPIs” means the key performance indicators in relation to the Services set out in schedule 4 which the Contractor shall comply with.

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

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

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the DFE would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses 9, 10, 12, 15, 17 and 33 and in schedule 8 and Schedule 11..

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:

- (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“Performance Measures/Standards” means the standards which the Contractor will measured against in respect of the delivery of the Services aligned to defined Key Performance Indicators (KPIs)

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

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the DFE a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) the defrauding, attempting to defraud or conspiring to defraud the DFE;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

“Regulations” means the Public Contract Regulations 2015.

“Regulatory Body” means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the DFE.

“Relevant Conviction” means a conviction for an offence involving violence or dishonesty, of a sexual nature or against minors, or for any other offence that is relevant to the nature of the Services.

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

“Relevant Tax Authority” means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

“Replacement Contractor” means any third party supplier appointed by the DFE to supply any services which are substantially similar to any of the Services in substitution for the Contractor following the expiry, termination or partial termination of the Contract.

“Request for Information” means a request for information under the FOIA or the EIR.

“Restricted Country” means:

- a) any country outside the United Kingdom; and
- b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC

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

“Services” means the services described in the Specification.

“Services Commencement Date” means 1 April 2022

“Service Credits” means the service credits specified in schedule 4 which shall be payable to the DFE by the Contractor in the event that the Service Levels are not met in respect of Services.

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

“Service Period” means the following:

- (a) the first Service Period of the Contract shall begin on the Services Commencement Date and shall expire at the end of the calendar month in which the Service Commencement Date falls; and
- (b) after the first Service Period of the Contract a Service Period shall be a calendar month during the Contract save that the final Service Period of the Contract shall commence on the first day of the calendar month in which the Contract expires or terminates and shall end on the expiry or termination of the Contract.

“Service Users” means those receiving the Services.

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises

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

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

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

“Term” means the period from the Effective Date until the date the Contract ends for whatever reason.

“TFEU” means the Treaty on the Functioning of the European Union.

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

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

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

“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

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

- 1.2.1 references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract which are in force prior to the date of the Contract;
- 1.2.2 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.2.3 the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context;
- 1.2.4 the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;
- 1.2.5 any reference in the Contract to a clause or schedule is a reference to a clause or schedule of the Contract and references in any schedule to paragraphs relate to the paragraphs in that schedule;
- 1.2.6 the clause headings are included for convenience only and shall not affect the interpretation of the Contract; and
- 1.2.7 the schedules and appendices form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules.

2. TERM

- 2.1 The Contract commences on the Effective Date and, subject to any provision of this Contract for earlier termination, or extension set out in this clause 2, will terminate at the end of the Initial Term.
- 2.2 DfE may extend the Initial Term for such further period as the DfE may choose by giving not less than 3 months’ written notice to the Contractor prior to the expiry of the

Initial Term.

3. THE SERVICES

- 3.1 The Contractor shall provide the Services in the Area in accordance with the Specification and undertake and be responsible for all obligations of the Contractor in respect of the Services.
- 3.2 The DFE may appoint other Contractors for the Services in the Area.
- 3.3 The Contractor shall, in performing its obligations under the Contract:
 - 3.3.1 conform to the requirements of the Specification and the Contractor's Solution or as otherwise agreed in writing between the Parties;
 - 3.3.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the DFE specified by the DFE from time to time;
 - 3.3.3 comply with Good Industry Practice;
 - 3.3.4 ensure that the Services are provided by competent and appropriately trained personnel;
 - 3.3.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - 3.3.6 comply with the KPIs, Service Levels and Service Credit requirements set out in schedule 4;
 - 3.3.7 comply with the Implementation Plan;
 - 3.3.8 in so far as is reasonably practicable, comply with any policies and procedures adopted by the DFE from time to time within 14 days of the same being brought to the attention of the Contractor by the DFE;
 - 3.3.9 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
 - 3.3.10 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of the DFE, the Service Users and all other persons including members of the public; and
 - 3.3.11 comply with all safety, security, acceptable use and other policies of the DFE from time to time notified to it and procure that the Personnel also comply.
- 3.4 The DFE may provide data and materials to the Contractor and access to systems for the purposes of providing the Services that the Contractor may use but only to the extent necessary to enable the Contractor to provide the Services.
- 3.5 All equipment and other property brought onto DFE Premises shall be at the Contractor's own risk and the DFE shall have no liability for any loss of or damage to any such equipment and property unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence of the DFE.
- 3.6 Any land or DFE Premises made available from time to time to the Contractor by the DFE in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely

for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or DFE Premises as a licensee and shall vacate the same on completion, termination or abandonment of the Contract or the task in respect of which such land or DFE Premises was made available.

- 3.7 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or any of the Personnel and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the DFE retains the right at any time to use any DFE Premises in any manner.

4. CONSORTIA

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

5. TRANSFER AND SUB-CONTRACTING

- 5.1 Save as set out in this clause 5 the Contractor may not sub-contract, assign, transfer, charge the benefit and/or delegate the burden of the whole or any part of the Contract (a “**Transfer**”) without the prior written consent of the DFE.
- 5.2 If the DFE consents to a Transfer the Contractor will evidence the Transfer in writing and provide a copy of the Transfer document on request.
- 5.3 The Contractor may award Sub-Contracts with a value per annum not exceeding £10,000 without the DFE’s consent.
- 5.4 Where the DFE has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of the DFE, be sent by the Contractor to the DFE as soon as reasonably practicable.
- 5.5 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the DFE’s prior written consent.
- 5.6 The DFE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the DFE’s right of termination pursuant to clause 23 unless the Sub-Contractor can remedy the breach to the DFE’s satisfaction within 21 days of receipt by the Contractor of written notice from the DFE requiring the Sub-Contract to be terminated.
- 5.7 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 5.8 If the DfE believes there are:
- 5.8.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57

of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or

5.8.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the DfE may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.

Improving visibility of subcontract opportunities available to SMEs and VCSEs in the supply chain

5.9 The Contractor shall:

5.9.1 subject to clause 5.9.7, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £10,000 that arise during the Contract Period;

5.9.2 within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;

5.9.3 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;

5.9.4 provide reports on the information at clause 5.9.3 to the DfE in the format and frequency as reasonably specified by the DfE;

5.9.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

5.9.6 Each advert referred to at clause 5.9.1 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.

5.9.7 The obligation at Clause 5.9.1 shall only apply in respect of subcontract opportunities arising after the contract award date.

5.9.8 Notwithstanding clause 5.9, the DfE may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

5.10 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, on request and at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the DfE including:

5.10.1 the total contract revenue received directly on a specific contract;

5.10.2 the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and

5.10.3 the total value of sub-contracted revenues to SMEs and VCSEs.

.

6. PERSONNEL

6.1 The DfE may refuse admission to DfE Premises and/or direct the Contractor to end the involvement in the Services of any Personnel whom the DfE believes is a security risk.

6.2 If the DfE require the removal of any Personnel pursuant to clause 6.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor's cost.

- 6.3 The Contractor shall use its reasonable endeavours to ensure continuity of Personnel and to ensure that the turnover rate of Personnel is at least as good as the prevailing industry norm for similar services, locations and environments.
- 6.4 The Contractor shall ensure that no person who discloses a Relevant Conviction or who is found to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service Procedures or otherwise), is employed or engaged in providing the Services without the DFE's prior written consent.
- 6.5 For each of the Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the DFE owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the Contractor shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.
- 6.6 The Contractor acknowledges that Key Personnel and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Personnel and Key Sub-Contractors listed in schedule 7 as at the Effective Date.
- 6.7 Key Personnel shall not be released from supplying the Services without the DFE's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 6.8 Any replacements of Key Personnel shall be subject to DFE consent and shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.9 The DFE shall not unreasonably withhold consent under clauses 6.7 or 6.8. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Personnel or Key Sub-Contractors.
- 6.10 DFE may require the Contractor to remove any Key Personnel who the DFE considers in any respect unsatisfactory.
- 6.11 The DFE shall not be liable for the cost of replacing any Key Personnel and the Contractor shall indemnify the DFE against all Employment Liabilities that may arise in this respect.
- 6.12 Except in respect of any transfer of staff under TUPE, for the Term and for 12 months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any staff of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at staff of the other Party.

7. TUPE

- 7.1 No later than 6 Months prior to the end of the Term the Contractor shall fully and accurately disclose to the DFE, within 30 days of the request, all information that the DFE may reasonably request in relation to the Staff including the following:
- 7.1.1 the total number of Staff whose employment/engagement shall terminate at the end of the Term;

- 7.1.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 7.1.1;
- 7.1.3 the terms and conditions of employment/engagement of the Staff referred to in clause 7.1.1, their job titles and qualifications;
- 7.1.4 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
- 7.1.5 details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union

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

- 7.2 At intervals determined by the DFE (which shall not be more frequent than once every 30 days) the Contractor shall give the DFE updated TUPE Information.
- 7.3 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Contractor.
- 7.4 The DFE may use TUPE Information for the purposes of any retendering process.
- 7.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the DFE, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:
 - 7.5.1 the provision of TUPE Information;
 - 7.5.2 any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;
 - 7.5.3 any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the DFE or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
 - 7.5.4 any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - 7.5.5 any claim by any person who is transferred by the Contractor to the DFE and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- 7.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the DFE and provide the DFE with up to date TUPE Information.

- 7.7 This clause 7 applies during the Term and indefinitely thereafter.
- 7.8 The Contractor undertakes to the DFE that, during the 12 Months prior to the end of the Term the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):
- 7.8.1 amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
 - 7.8.2 terminate or give notice to terminate the employment or engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - 7.8.3 transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
 - 7.8.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

8. CHARGES

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 8.2 In consideration for the provision of the Services the DFE shall pay the Charges in accordance with the schedule 3 subject to the receipt of correct invoices pursuant to clause 8.8 being issued by the Contractor.
- 8.3 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.
- 8.4 Except where otherwise expressly stated in schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Term.
- 8.5 The Charges are exclusive of Value Added Tax ("**VAT**") and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the DFE of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from **VAT**.

- 8.6 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.
- 8.7 The DFE may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 8.8 Invoices shall be submitted electronically by email to <redacted> <redacted> within 30 days of the end of the relevant invoicing date. To request a statement, please email <redacted> An invoice is a “**Valid Invoice**” if it is legible and includes:
- 8.8.1 the date of the invoice;
 - 8.8.2 Contractor’s full name and address;
 - 8.8.3 Contract reference number;
 - 8.8.4 the charging period;
 - 8.8.5 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
 - 8.8.6 days and times worked (if applicable);
 - 8.8.7 Service Credits (if applicable); and
 - 8.8.8 VAT if applicable.
- 8.9 The DFE shall not pay an invoice which is not a Valid Invoice.
- 8.10 The DFE intends to pay Valid Invoices within 5 days of receipt. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause 8.10 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 8.11 The DFE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.12 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the DFE. The final invoice shall be submitted not later than 30 days after the end of the Term.
- 8.13 The DFE shall not be obliged to pay the final invoice until the Contractor has carried out all of the Service.
- 8.14 The Contractor shall ensure that a term is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- 8.15 If the DFE disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within 10 Business Days notify the Contractor of the reasons for disputing the invoice. The DFE may withhold the disputed amount pending

resolution of the dispute.

- 8.16 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 36.

9. TAX and VAT

- 9.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under the Contract it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- 9.2 If the Services are liable for VAT the Contractor shall comply with HMRC rules and regulations. The Contractor will be liable for paying to HMRC any identified VAT including those which may fall due.
- 9.3 If the Contractor is liable to NICs in respect of consideration received under the Contract it shall comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- 9.4 The DFE may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it.
- 9.5 A request under clause 9.4 may specify the information which the Contractor must provide and the period within which that information must be provided.
- 9.6 The DFE may terminate this Contract if:
- 9.6.1 in the case of a request mentioned in clause 9.4 the Contractor:
- (i) fails to provide information in response to the request within a reasonable time; or
 - (ii) provides information which does not demonstrate either how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it;
- 9.6.2 it receives information which demonstrates that, if clauses 9.1 to 9.3 apply, the Contractor is not complying with those clauses.
- 9.7 The DFE may supply any information which it receives under clause 9.4 to HMRC.
- 9.8 The Contractor bears sole responsibility for the payment of tax and national insurance contributions due from it in relation to any payments or arrangements made under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract.
- 9.9 The Contractor will account to the appropriate authorities for any applicable income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract. The Contractor shall indemnify DFE against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the Contractor of its obligations under the Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by DFE in connection with any such assessment or claim.
- 9.10 The Contractor authorises the DFE to provide HMRC and all other departments or agencies of the Government with any information which they may request as to fees

and/or expenses paid or due to be paid under the Contract whether or not DFE is obliged as a matter of law to comply with such request.

9.11 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

9.11.1 notify the DFE in writing of such fact within 5 Business Days of its occurrence; and

9.11.2 promptly give the DFE:

(i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and

(ii) such other information in relation to the Occasion of Tax Non-Compliance as the DFE may reasonably require.

10. PREVENTION OF CORRUPTION

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

10.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or

10.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

10.2 The Contractor shall not:

10.2.1 commit a Prohibited Act; or

10.2.2 do or suffer anything to be done which would cause the DFE or any of its employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

10.3 The Contractor shall:

10.3.1 and procure that its Sub-Contractors shall, establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

10.3.2 keep appropriate records of its compliance with its obligations under clause 10.3.2 and make such records available to the DFE on request.

10.4 The Contractor shall immediately notify the DFE in writing if it becomes aware of any breach of clauses 10.1 and/or 10.2, or has reason to believe that it has or any of the Personnel have:

10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

10.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or

- 10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 10.5 If the Contractor notifies the DFE pursuant to clause 10.4, the Contractor shall respond promptly to the DFE's enquiries, co-operate with any investigation, and allow the DFE to audit any books, records and any other relevant documentation.
- 10.6 If the Contractor is in Default under clauses 10.1 and/or 10.2, the DFE may by notice:
- 10.6.1 require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
- 10.6.2 immediately terminate the Contract.
- 10.7 Any notice served by the DFE under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the party who the DFE believes has committed the Prohibited Act and the action that the DFE has taken (including, where relevant, the date on which the Contract shall terminate).

11. DISCRIMINATION

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

12. INTELLECTUAL PROPERTY

- 12.1 All Intellectual Property Rights in materials:
- 12.1.1 furnished to or made available to the Contractor by or on behalf of the DFE (the "**DFE IP Materials**") shall remain the property of the DFE (save for Copyright and Database Rights which shall remain the property of the Crown); and
- 12.1.2 prepared by or for the Contractor on behalf of the DFE in connection with the Contract (the "**Service Specific IP Materials**") shall vest in the DFE (save for Copyright and Database Rights which shall vest in the Crown)
- (together the "**IP Materials**").
- 12.2 The Contractor shall not, and shall ensure that Personnel shall not, use or disclose IP Materials without the DFE's approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.

- 12.3 The Contractor hereby assigns to the DFE or undertakes to procure the assignment to the DFE of all Intellectual Property Rights which may subsist in the Service Specific IP Materials (save for Copyright and Database Rights which it hereby assigns to the Crown or undertakes to procure the assignment of to the Crown). These assignments shall be given with full title guarantee, shall take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service Specific IP Materials and shall include, without limitation, an assignment to the DFE (or the Crown as appropriate) of all rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Contractor shall execute all documents and do all other acts requested by the DFE and necessary to execute and perfect these assignments and to otherwise evidence the DFE's or the Crown's ownership of such rights.
- 12.4 The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright produced by or in connection with the Contract or the performance of the Contract.
- 12.5 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the DFE a non-exclusive licence or, if itself a licensee of those rights, shall grant to the DFE an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the DFE to sub-licence, transfer, novate or assign to a Replacement Contractor. The Contractor shall notify the DFE of any third party Intellectual Property Rights to be used in connection with the Contract prior to their use in connection with the Contract or the creation or development of the Service Specific IP Materials.
- 12.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Contractor shall indemnify and keep indemnified the DFE and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the DFE may suffer or incur as a result of or in connection with any breach of this clause 14, except to the extent that any such claim arises from:
- 12.6.1 items or materials supplied by the DFE; or
- 12.6.2 the use of data supplied by the DFE which is not required to be verified by the Contractor under any provision of the Contract.
- 12.7 The DFE shall notify the Contractor in writing of any claim or demand brought against the DFE for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor.
- 12.8 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in materials supplied and/or licensed by the Contractor to the DFE, provided always that the Contractor shall:
- 12.8.1 consult the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;
- 12.8.2 take due and proper account of the interests and concerns of the DFE; and
- 12.8.3 not settle or compromise any claim without the DFE's prior written consent (not to be unreasonably withheld or delayed).
- 12.9 Notwithstanding clause 12.8. the DFE may take any action it deems appropriate with

respect to any such claim and shall have exclusive control of such claim. If the DFE takes action the Contractor shall at the request of the DFE afford to the Contractor all reasonable assistance to the DFE for the purpose of contesting such claim.

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

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

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

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

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

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

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

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

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

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

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

any act or thing which:

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

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

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

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

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

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

13. PROCESSING DATA (DATA PROTECTION ACT)

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

14. DATA HANDLING AND SYSTEMS ASSURANCE (SECURITY)

14.1 The Parties shall comply with the provisions of schedule 11.

15. PUBLICITY AND PROMOTION

15.1 Subject to clause 16.2, without prejudice to the DFE's obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

15.2 The Contractor shall use reasonable endeavours to ensure its Personnel comply with clause 15.1

15.3 Without prejudice to the generality of clauses 12.18 and 15.1, the Contractor shall not itself, and shall procure that Consortium Members shall not, use the DFE's name, brand or DFE Trade Marks or the Personal Data of the DFE to sell, promote, market or publicise the Contractor's other programmes, courses, services or other activities.

15.4 Subject to clauses 12 and 16 DFE may disclose, copy and otherwise distribute to the public, including but not limited to, by way of the Open Government Licence, any information arising out of the Services or comprised in any work relating to the Services.

16. CONFIDENTIALITY

16.1 Except to the extent set out in this clause 16 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's

written consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

- 16.2 The Contractor hereby gives its consent for the DFE to publish the whole Contract including from time to time agreed changes to the Contract.
- 16.3 The Contractor may only disclose the DFE's Confidential Information to Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that Personnel are aware of and shall comply with these obligations as to confidentiality.
- 16.4 The Contractor shall not, and shall procure that Personnel do not, use any of the DFE's Confidential Information received otherwise than for the purposes of the Contract.
- 16.5 Clause 16.1 shall not apply to the extent that:
 - 16.5.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - 16.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 16.5.3 such information was obtained from a third party without obligation of confidentiality;
 - 16.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 16.5.5 it is independently developed without access to the other Party's Confidential Information.
- 16.6 Nothing in clause 16 shall prevent the DFE disclosing any Confidential Information obtained from the Contractor:
 - 16.6.1 for the purpose of the examination and certification of the DFE's accounts;
 - 16.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DFE has used its resources;
 - 16.6.3 to any other crown body and the Contractor hereby acknowledges that all government departments receiving such Confidential Information may further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or
 - 16.6.4 to any consultant, contractor or other person engaged by the DFE provided that in disclosing information under clauses 16.6.3 and 16.6.4 the DFE discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 16.7 Nothing in clauses 16.1 to 16.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

- 16.8 The DFE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the DFE's Confidential Information is disclosed pursuant to clause 16.6 is made aware of the DFE's obligations of confidentiality.
- 16.9 If the Contractor does not comply with clauses 16.1 to 16.5 the DFE may terminate the Contract immediately on notice to the Contractor.

17. FREEDOM OF INFORMATION

- 17.1 The Contractor acknowledges that the DFE is subject to the requirements of the FOIA and the EIR.
- 17.2 The Contractor shall transfer to the DFE all Requests for Information that it receives as soon as practicable and in any event within 2 Business Days of receipt:
- 17.2.1 give the DFE a copy of all Information in its possession or control in the form that the DFE requires within 5 Business Days (or such other period as the DFE may specify) of the DFE's request;
 - 17.2.2 provide all necessary assistance as reasonably requested by the DFE to enable the DFE to comply with its obligations under the FOIA and EIR; and
 - 17.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the DFE.
- 17.3 The DFE shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

18. OFFICIAL SECRETS ACTS AND FINANCE ACT

- 18.1 The Contractor shall comply with the provisions of:
- 18.1.1 the Official Secrets Acts 1911 to 1989; and
 - 18.1.2 section 182 of the Finance Act 1989.

19. LIABILITY

- 19.1 Neither Party excludes or limits its liability (if any) to the other:
- 19.1.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
 - 19.1.2 for personal injury or death resulting from the its negligence;
 - 19.1.3 under section 2(3) Consumer Protection Act 1987;
 - 19.1.4 any breach of clause 16 (Confidentiality), schedule 8 or Schedule 11;
 - 19.1.5 for its own fraud; or
 - 19.1.6 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.
- 19.2 Subject to clauses 19.1 and 19.3, the Contractor shall indemnify the DFE and keep the DFE indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may

arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor or any Personnel on the Premises, including in respect of death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

- 19.3 The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses 12 (Intellectual Property) and 9 (Tax).
- 19.4 Subject to clauses 19.1, 19.3 and 19.6, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:
 - 19.4.1 for any losses of an indirect or consequential nature;
 - 19.4.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or
 - 19.4.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.
- 19.5 Subject to clauses 19.1 and 19.3, the maximum liability of either Party to the other under the Contract, whether in contract, tort (including negligence) or otherwise:
 - 19.5.1 in respect of damage to property is limited to £5M in respect of any one incident or series of connected incidents; and
 - 19.5.2 in respect of any claim not covered by clause 19.5.1, is limited in each calendar year in aggregate to 200% of the sum of the Charges payable in that year.
- 19.6 The DFE may recover from the Contractor the following losses incurred by the DFE to the extent they arise as a result of a Default by the Contractor:
 - 19.6.1 any additional operational and/or administrative costs and expenses incurred by the DFE, including costs relating to time spent by or on behalf of the DFE in dealing with the consequences of the default;
 - 19.6.2 any wasted expenditure or charges;
 - 19.6.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
 - 19.6.4 any compensation or interest paid to a third party by the DFE; and
 - 19.6.5 any fine or penalty incurred by the DFE and any costs incurred by the DFE in defending any proceedings which result in such a fine or penalty.
- 19.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 19.8 All property of the Contractor whilst on the DFE's premises shall be there at the risk of the Contractor and the DFE shall accept no liability for any loss or damage howsoever occurring to it.
- 19.9 The Contractor shall effect and maintain in force with a reputable insurance company

employer's liability and public liability insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £5,000,000 for any one claim, for professional indemnity insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £1,000,000 for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.

- 19.10 The Contractor shall supply to the DFE on demand copies of the insurance policies maintained under clause 19.9.
- 19.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 19.12 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.

20. WARRANTIES AND REPRESENTATIONS

- 20.1 The Contractor warrants and represents that:

- 20.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

- 20.1.2 in entering the Contract it has not committed any fraud;

- 20.1.3 as at the Effective Date, all information contained in the Contractor's Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the DFE prior to execution of the Contract;

- 20.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;

- 20.1.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

- 20.1.6 the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party's work or materials provided that this clause 20.1.6 shall not apply to any IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and

- 20.1.7 the use by the DFE of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;

- 20.1.8 in the 3 years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:

- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

20.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and

20.1.10 it has notified the DFE in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

21. FORCE MAJEURE

21.1 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 21.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.

21.2 If either Party is prevented from performance of its obligations for a continuous period in excess of 3 months, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

21.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use reasonable endeavours to end Force Majeure or to find solutions by which the Contract may be performed despite the Force Majeure.

22. MONITORING AND REMEDIATION

22.1 The DFE or its authorised representatives may visit on reasonable notice to the Contractor any premises of the Contractor, any Consortium Member or any other premises at which the Services (or any part of them) are being or are to be performed to ascertain that the Contractor is conforming in all respects with its obligations arising under the Contract and otherwise to monitor and quality assure the provision of the Services.

22.2 During such visits, the DFE may inspect and take copies of such of the records of the Contractor and any Consortium Member as relate to the performance of their obligations under the Contract.

22.3 If the DFE reasonably considers that any provision of the Contract is at risk of not being complied with it may, notwithstanding and without prejudice to any other right or remedy that it may have under the Contract or otherwise:

22.3.1 require the Contractor to produce a plan of remedial action in order to remedy or remove such risk, which shall be subject to the approval of the DFE (not to be unreasonably withheld) and which, once approved, the Contractor shall implement; and

- 22.3.2 monitor, supervise, direct and/or guide the Contractor's provision of the Services until the DFE reasonably considers that any such risk has been remedied or removed. The Contractor shall cooperate at all times with the DFE in this regard.
- 22.4 If the Contractor fails to comply with any provision of the Contract or fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the DFE may instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 21 days or such other period of time as the DFE may direct.
- 22.5 The DFE may review from time to time the progress of the Contractor against the Implementation Plan. The Contractor shall cooperate with the DFE in this regard and provide any information and evidence reasonably required by the DFE.
- 22.6 The DFE may instruct the Contractor to take appropriate remedial action where the DFE reasonably considers that the Implementation Plan is not being complied with or is at risk of not being complied with and the Contractor shall take such remedial action.

23. STEP IN RIGHTS

- 23.1 Without prejudice to DFE's rights of termination under clause 23 the DFE may exercise one or more of the rights set out in this clause 23 ("**Step In Rights**") if:
- 23.1.1 there is a Default by the Contractor which materially prevents or materially delays performance of the Services or any part of the Services;
- 23.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;
- 23.1.3 a Regulatory Body has advised the DFE that exercise by the DFE of its rights under this clause 23 is necessary;
- 23.1.4 a serious risk exists to the health and safety of persons, property or the environment;
- 23.1.5 it is necessary to discharge a statutory duty; or
- 23.1.6 the Contractor becomes insolvent.
- 23.2 If the DFE has a Step In Right it may serve notice on the Supplier (a "**Step-In Notice**") that it will take action under this clause 23 either itself or with the assistance of a third party.
- 23.3 The Step-In Notice shall set out:
- 23.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the "**Required Action**");
- 23.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor's Default;
- 23.3.3 the date on which it wishes to commence the Required Action;
- 23.3.4 the time period which it believes will be necessary for the Required Action;
- 23.3.5 whether the DFE will require access to the Contractor's premises; and
- 23.3.6 to the extent practicable, the effect the DFE anticipates the Required Action

will have on the Contractor's obligations to provide the Services during the period that the Required Action is being taken.

- 23.4 Following service of a Step-In Notice, the DFE shall:
- 23.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - 23.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;
 - 23.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the DFE is not assuming control; and
 - 23.4.5 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.
- 23.5 For as long as and to the extent that the Required Action continues:
- 23.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
 - 23.5.2 the DFE shall pay the Contractor the Charges after subtracting any applicable Service Credits and the DFE's costs of taking the Required Action.
- 23.6 If the Contractor demonstrates to the DFE's reasonable satisfaction that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the DFE not taken the Required Action, the DFE may adjust the Charges.
- 23.7 Before ceasing to exercise its Step In Rights the DFE shall deliver a written notice to the Contractor (a "**Step-Out Notice**"), specifying:
- 23.7.1 the Required Action it has taken; and
 - 23.7.2 the date on which the DFE plans to end the Required Action subject to the DFE being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 23.8.
- 23.8 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the date specified in clause 23.7.2, develop for the DFE's approval a draft plan relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of the Contract.
- 23.9 If the DFE does not approve the draft plan, it shall inform the Contractor of its reasons for not approving it and the Contractor shall then revise the draft plan taking those reasons into account and shall re-submit the revised plan to the DFE for approval. The DFE shall not withhold or delay its approval of the draft plan unreasonably.
- 23.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 23, provided that the DFE shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-In action taken by the DFE under clauses 23.1.2 to 23.1.5 (insofar as the primary cause of the DFE serving the Step In Notice is identified as not being the result of a Contractor's Default).

24. TERMINATION

- 24.1 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
- 24.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - 24.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - 24.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - 24.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 24.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - 24.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 24.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 24.1.8 any event similar to those listed in clauses 24.1.1 to 24.1.7 occurs under the law of any other jurisdiction.
- 24.2 The DFE may terminate the Contract with immediate effect by notice and without paying compensation to the Contractor where the Contractor is an individual and:
- 24.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
 - 24.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
 - 24.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
 - 24.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
 - 24.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
 - 24.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;

- 24.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- 24.2.8 any event similar to those listed in clauses 24.2.1 to 24.2.7 occurs under the law of any other jurisdiction.
- 24.3 The Contractor shall notify the DFE immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 months of:
 - 24.3.1 being notified that a Change of Control has occurred; or
 - 24.3.2 where no notification has been made, the date that the DFE becomes aware of the Change of Control

but shall not be permitted to terminate where approval was granted prior to the Change of Control.
- 24.4 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a partnership and:
 - 24.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
 - 24.4.2 it is for any reason dissolved;
 - 24.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;
 - 24.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets;
 - 24.4.5 the partnership is deemed unable to pay its debts within the meaning of sections 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
 - 24.4.6 any of the following occurs in relation to any of its partners:
 - 24.4.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
 - 24.4.6.2 a petition is presented for his bankruptcy;
 - 24.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or
 - 24.4.6.4. any event similar to those listed in clauses 24.4.1 to 24.4.6 occurs under the law of any other jurisdiction.
- 24.5 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a limited liability partnership and:
 - 24.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency

Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;

- 24.5.2 it is for any reason dissolved;
 - 24.5.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
 - 24.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
 - 24.5.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
 - 24.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - 24.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 24.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 24.5.9 any event similar to those listed in clauses 24.5.1 to 24.5.8 occurs under the law of any other jurisdiction.
- 24.6 References to the Insolvency Act 1986 in clause 24.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 24.7 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
- 24.7.1 the Contractor has not remedied the Default to the satisfaction of the DFE within 21 Business Days or such other period as may be specified by the DFE, after issue of a notice specifying the Default and requesting it to be remedied
 - 24.7.2 the Default is not, in the opinion of the DFE, capable of remedy; or
 - 24.7.3 the Default is a Material Breach.
- 24.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 24.8.1 the Contractor's warranty in clause 20.1.10 is materially untrue;
 - 24.8.2 the Contractor commits a material breach of its obligation to notify the DfE of any Occasion of Non-Tax Compliance;
 - 24.8.3 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.
- 24.9 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 24.9.1 the Contract has been subject to a substantial modification which requires a

new procurement procedure pursuant to regulation 72(9) of the Regulations;

24.9.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract; or

24.9.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

24.10 If the DFE terminates the Contract under clauses 24.7, 24.8 or 24.9:

24.10.1 and makes other arrangements for the supply of the Services, the DFE may recover from the Contractor the cost reasonably incurred of making those other arrangements; and

24.10.2 the DFE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause 24.

24.11 Either Party may terminate the Contract (or any part of it) at any time by giving at least [3] months' prior written notice to the other Party.

24.12 If the DFE terminates the Contract under clause 24.11 the DFE shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE.

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

24.14 If the DFE terminates the Contract under clause 24.13 the DFE shall pay to the Contractor for Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs), provided that the Contractor shall use all reasonable endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavailability of such costs.

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

24.16 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within 30 Business Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the DFE exercising its rights under clause 8.7 or to Force Majeure.

24.17 Save as otherwise expressly provided in the Contract:

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

24.17.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the DFE or the Contractor under clauses 8 (Payment), 9 (Tax and VAT), 10 (Prevention of Fraud), 12 (Intellectual Property Rights), 13 (Processing Data), 16 (Confidentiality), 17 (Freedom of Information), 18 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 180 (Warranties and Representations), 19 (Liability), 24 (Termination) 25 (Retendering and Handover), 26 (Exit Management), 27 (Audit), and 38 (Governing Law and Jurisdiction).

24.18 Termination by DfE if quarterly Performance Standards not met

24.18.1 If the Contractor fails to meet any of the quarterly Performance objectives, KPI's in any two consecutive quarters, at either party's request to the other party, both parties must meet to work together in good faith to attempt to understand why the quarterly Performance Standards have not been achieved and implement strategies jointly agreed between the parties to attempt to enable the Contractor to achieve the quarterly Performance Standards.

24.18.2 If the parties agree on a strategy under clause 24.18.1 and, in the quarter following the implementation of the joint strategy under clause 24.18.1 the Contractor fails to achieve any of the quarterly Performance Standards, DfE may terminate this agreement on 30 days' notice to Contract.

24.18.3 If Contractor fails to meet any of the quarterly Performance Standards in any three consecutive quarters, DfE may terminate this agreement on 10 Business Days' notice to the Contractor.

25. RETENDERING AND HANDOVER

25.1 Within 30 days of being requested by the DFE, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable the DFE to issue tender documents for the future provision of replacement services.

25.2 The DFE shall take reasonable precautions to ensure that the information referred to in clause 25.1 is given only to potential contractors who have qualified to tender for the future provision of the replacement services.

25.3 The DFE shall require that all potential Contractors treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the DFE; and that they shall not use it for any other purpose.

25.4 The Contractor shall allow access to the Premises in the presence of DFE's authorised representative, to any person representing any potential contractor whom the DFE has selected to tender for the future provision of the Services.

25.5 If access is required to the Contractor's Premises for the purposes of clause 27.4, the DFE shall give the Contractor 7 days' notice of a proposed visit together with the names of all persons who will be visiting.

25.6 The Contractor shall co-operate fully with the DFE during any handover at the end of

the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

- 25.7 Within 10 Business Days of being requested by the DFE, the Contractor shall transfer to the DFE, or any person designated by the DFE, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made using the appropriate secure methods of data transfer in use at the time of handover.

26. EXIT MANAGEMENT

- 26.1 If the DFE requires a continuation of all or any of the Services at the end of the Term, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the DFE and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- 26.2 The Contractor will, within 3 months of the Effective Date, deliver to the DFE, a plan which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the DFE and/or its Replacement Contractor at the end of the Term (an **"Exit Plan"**).
- 26.3 Within 30 days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 36.
- 26.4 The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update the Contractor will submit the revised Exit Plan to the DFE for review. Within 30 days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within 30 days, such dispute shall be referred to the dispute resolution procedure in clause 37.
- 26.5 If the Contractor:
- 26.5.1 does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Charges; or
- 26.5.2 reasonably incurs additional costs
- the Parties shall agree a variation of the Charges.
- 26.6 If the DFE requests, the Contractor shall deliver to the DFE details of all licences for software used in the provision of the Services including the software licence agreements.
- 26.7 Within one month of receiving the software licence information described above, the DFE shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the DFE a plan for licence transfer.
- 26.8 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the DFE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than 15 Business Days from the date that that request was made.

27. AUDIT

- 27.1 The Contractor shall keep and maintain until 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all Charges.
- 27.2 The Contractor agrees to make available to the DFE, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services
- 27.3 The Contractor shall permit duly authorised representatives of the DFE and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- 27.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the DFE and for carrying out examinations into the economy, efficiency and effectiveness with which the DFE has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

28. ENTIRE AGREEMENT

- 28.1 The Contract contains all the terms which the Parties have agreed in relation to the subject matter of the Contract and supersedes any prior written or oral agreements, representations or understandings between the Parties.
- 28.2 Nothing in this clause 28 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

29. PARTNERSHIP

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

30. WAIVER

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

31. CHANGE CONTROL

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

32. COUNTERPARTS

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

33. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 33.1 The provisions of clauses 7.5 and 12.6 confer benefits on a Replacement Contractor and are intended to be enforceable by a Replacement Contractor by virtue of the Contracts (Rights of Third Parties) Act 1999 (“**CRTPA**”).
- 33.2 Subject to clause 33.1, a person who is not a Party has no right under CRTPA to enforce provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- 33.3 A Replacement Contractor may not enforce or take steps to enforce the provisions of clauses 7.5 or 12.6 without DFE's prior written consent.
- 33.4 The Parties may amend the Contract without the consent of any Replacement Contractor.

34. CONFLICTS OF INTEREST

- 34.1 The Contractor shall:
 - 34.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and
 - 34.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the DFE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 34 as a “**Conflict of Interest**”.
- 34.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 34 the Contractor shall forthwith provide full particulars to the DFE.
- 34.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.
- 34.4 Without prejudice to the foregoing provisions of this clause 34, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:
 - 34.4.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the DFE (acting reasonably); and
 - 34.4.2 give the DFE a comprehensive and detailed written statement of the action it had taken.
- 34.5 If the DFE is not satisfied with the Contractor's actions, the Contractor shall, on request by the DFE promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).
- 34.6 Without prejudice to any other right or remedy it may have, the DFE may terminate the Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the DFE, there is any continuing

breach by the Contractor of the provisions of this clause 34.

35. FURTHER ASSURANCE

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

36. NOTICES

- 36.1 Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, facsimile or e-mail, addressed to the recipient at its registered office or its address (or such other address, facsimile number or e-mail address as may be notified in writing from time to time).
- 36.2 The notice, demand or communication shall be deemed to have been duly served:
- 36.2.1 if delivered by hand, when left at the proper address for service;
- 36.2.2 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;
- 36.2.3 if given or made by facsimile or e-mail, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post or (where being sent to an address in a different country to where posted) airmail to the other Party within 24 hours after transmission and that, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).
- 36.3 If proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.

37. DISPUTE RESOLUTION

- 37.1 Any Dispute shall be dealt with in accordance with this clause 37.
- 37.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within 15 days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.
- 37.3 If a Dispute cannot be resolved by negotiation as referred to in clause 37.2 within 30 days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs.

38. GOVERNING LAW AND JURISDICTION

- 38.1 The Contract and any non-contractual obligations arising out of or connection with it will be governed by and construed in accordance with English Law.
- 38.2 The courts of England shall have exclusive jurisdiction to settle any dispute which

arises out of or in connection with the Contract.

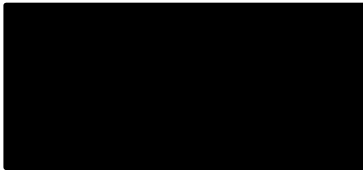
- 38.3 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.

Schedule 3

Financials

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

Detailed Cost Matrix (Embedded)



Schedule 4

KPIs, Service Levels and Service Credits

- 1 The objectives of the Service Levels are to:
 - 1.1 ensure that the Services are of a consistently high quality and meet the requirements of the DFE;
 - 1.2 provide a mechanism whereby the DFE can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the Services; and
 - 1.3 incentivise the Contractor to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

KEY PERFORMANCE INDICATORS (KPIs) AND SERVICE LEVELS (SLs)

- 2 This schedule 4 sets out the KPIs and Service Levels against which the Contractor shall measure its performance.
- 3 The Contractor shall monitor its performance against of each of the KPIs and Service Levels in and send the DFE a report detailing the KPIs and Service Levels which were achieved in accordance with the provisions of this schedule 4.

PERFORMANCE STANDARDS/MEASURES

- 4 The Contractor must meet the Performance Measure for each identified KPI as set out in table 1 below within the agreed Service Period (defined Schedule 2 and within table 1)
 - 4.1 Service period is defined as a quarter.
- 5 If during a Service period the Contractor achieves a KPI/Service Level, no Service Credit ("reduction in total amount of charges payable to the Contractor") will accrue to the Contractor in respect of that KPI/Service Level
- 6 The Contractor confirms that it has taken Performance Measures and Service Credits into account in calculating the Charges. Both Parties agree that the Performance Measures and Service Credits are a reasonable method of adjusting the Charges to reflect poor Contractor performance.
- 7 The Contractor will be expected to meet/comply with all Service Levels as set out within table 2 below.

CONSEQUENCES OF FAILURE TO MEET KPIS

- 8 A failure to meet at least the required performance level will be considered a "Service Failure" in respect of the KPIs set out in Table 1 below
- 9 If performance level is a Service Failure in one or more of the KPIs listed in Table 2 in any given service period, DfE will be entitled at its sole discretion, to reduce the total amount of charges payable to the Contractor ("Service Credit") for that period by:
 - 9.1 5% for one KPI failed
 - 9.2 10% for two KPIs failed
 - 9.3 to a maximum of 15% for three or more KPIs failed

- 10 A failure to meet the required performance level for the other KPIs will not be considered a Service Failure in the context of paragraph 7 but expects to meet the required performance levels and will consider repeated failures as breaches of this contract
- 11 In addition to its rights under paragraph 7, if there are one or more Service Failures in 3 **(three)** consecutive Service Periods, DfE will be entitled, at its sole discretion, to terminate this contract on 30 days written notice.

Table 1 KPIs - Maintained Schools and LGBs – Lot 2

KPI's will be as per the ITT.

	KPI	Measure	Monitoring Method	Financial Penalty	Target and Measure for application of Financial Penalty
1	Minimum volumes MV 1 - 4	<p>MV 1: In year 1 (FY 2022-23) A minimum of 1,225 appointments to boards of maintained schools or to academy LGBs.</p> <p>MV 2: In year 2 (FY 2023-24) A minimum of 1,250 appointments to boards of maintained schools or to academy LGBs.</p> <p>Per Annum:</p> <p>MV 3: A minimum of 30% of those placed should be to boards of Maintained Schools who have been rated as 'Requires Improvement' or 'Inadequate' by Ofsted, or LGBs in trusts that are deemed to be 'high-need'¹</p>	Quarterly monitoring during the duration of the contract.	<p>MV 1: Up to 0.5% of contract value in FY 2022-23= £2,750</p> <p>MV 2: Up to 0.5% of contract value in FY 2023-24= £2,750</p> <p>MV 3: 0.5% of the contract value in FY 2022-23 = £2,750 and 0.5% of the contract</p>	Success against target will be measured at: 31 March 2023 (contract year 1) and 31 March 2024 (contract year 2).

¹ High-need' is identified as a school or trust that:

- Is a maintained school or single academy trust judged as being 'Requires Improvement' or 'Inadequate' at the most recent Ofsted inspection
- Is an Academy Trust with multiple academies where >40% of its academies have been judged as being 'Requires Improvement' or 'Inadequate' at the most recent Ofsted inspection
- Is an Academy Trust with multiple academies where at least one of its academies have been judged as being 'Requires Improvement' or 'Inadequate' in at least two consecutive Ofsted inspections
- Is an Academy Trust that has been issued a 'Trust Notice to Improve'
- Any other maintained school or Academy Trust identified by RSC offices or ESFA as being 'high-need'

		MV 4: The remaining 70% of minimum appointments can be to maintained schools and academy LGBs via the 'Directed or Organic' routes.		value in FY 2023-24 = £2,750 MV 4: No Penalty	
2	Geographical spread GS 1 - 2	<p>Per annum:</p> <p>GS1:</p> <ul style="list-style-type: none"> A minimum of 8% of the total number of appointments must be made in each of the 8 RSC regions. No more than 25% of the total number of appointments can be made in any one RSC region² <p>GS2: At least 60% of those appointed and placed should be to schools or LGBs situated outside of London³.</p>	Quarterly monitoring during the duration of the contract.	<p>GS 1: 0.5% of the contract value in FY 2022-23 = £2,750 and 0.5% of the contract value in FY 2023-24 = £2,750</p> <p>GS 2: 0.5% of the contract value in FY 2022-23 = £2,750 and 0.5% of the contract value in FY 2023-24 = £2,750</p>	Success against target will be measured at: 31 March 2023 (contract year 1) and 31 March 2024 (contract year 2).

-
- Is a school or trust where the Ofsted grading would not warrant a "high need" intervention but a need for governance support makes a Local Authority, Diocese or Trust request assistance from the Lot 2 programme."

² The 8 RSC regions are: East of England and North-East London, East Midlands and the Humber, Lancashire and West Yorkshire, North of England, North-West London and South-Central England, South-East England and South London, South-East England, and the West Midlands

³ London boroughs of Barking and Dagenham, Barnet, Bexley, Brent, Bromley, Camden, Croydon, Ealing, Enfield, Greenwich, Hackney, Hammersmith and Fulham, Haringey, Harrow, Havering, Hillingdon, Hounslow, Islington, Kensington and Chelsea, Kingston upon Thames, Lambeth, Lewisham, Merton, Newham, Redbridge, Richmond upon Thames, Southwark, Sutton, Tower Hamlets, Waltham Forest, Wandsworth, Westminster

3	Volunteer characteristics VC 1 - 4	<p>Per annum:</p> <p>VC 1: At least 14% of those recruited should identify themselves as being from a BAME background.</p> <p>VC 2: A minimum of 25% of volunteers recruited and appointed should be aged between 18 to 39.</p> <p>VC 3: A minimum of 25% of volunteers recruited and appointed should be aged between 40 to 59.</p> <p>VC 4: No less than 40% of appointments should be male and no less than 40% of appointments should be female.</p>	<p>Quarterly monitoring during the duration of the contract.</p>	<p>VC 1: 0.5% of the contract value in FY 2022-23 = £2,750 and 0.5% of the contract value in FY 2023-24 = £2,750</p> <p>VC 2: 0.5% of the contract value in FY 2022-23 = £2,750 and 0.5% of the contract value in FY 2023-24 = £2,750</p> <p>VC 3: 0.5% of the contract value in FY 2022-23 = £2,750 and 0.5% of the contract value in FY 2023-24 = £2,750</p> <p>VC 4: 0.5% of the contract value in FY 2022-23 = £2,750 and 0.5% of the contract value in FY 2023-24 = £2,750</p>	<p>Success against target will be measured at: 31 March 2023 (contract year 1) and 31 March 2024 (contract year 2).</p>
4	Volunteer Expertise VE 1	<p>Per annum:</p> <p>VE1: At least 60% of those placed onto a board, per annum, should have identified themselves as having >50% of the skills/expertise requested by the board.</p>	<p>Quarterly monitoring during the duration of the contract.</p> <p>Achievement to be measured and reported by suppliers in line with the MI requirements set out in Document 10 Evaluation Requirements.</p>	<p>VE 1: 0.5% of the contract value in FY 2022-23 = £2,750 and 0.5% of the contract value in FY 2023-24 = £2,750</p>	<p>Success against target will be measured at: 31 March 2023 (contract year 1) and 31 March 2024 (contract year 2).</p>

5	Satisfaction S 1 - 2	<p>Through supplier led quality assurance processes the service must for each contract year:</p> <p>S1: Be identified as 'good or higher' by at least 90% of those volunteers placed that respond to the survey.</p> <p>S2: Be identified as 'good or higher' by at least 90% of the boards whose vacancies are filled.</p> <p>S3: A minimum 30% survey response rate must be achieved for S1 and S2 above.</p>	<p>Quarterly monitoring during the duration of the contract.</p> <p>Satisfaction will be measured through supplier led quality assurance processes (to be agreed by DfE in line with Document 10 – Evaluation requirements).</p>	No penalty	<p>Success against target will be measured at: 31 March 2023 (contract year 1) and 31 March 2024 (contract year 2).</p>
6	Management information MI 1	<p>MI1: All information requested (as set out in Document 6 and Document 10 of this tender) is submitted to the department on time.</p>	<p>Quarterly monitoring during the duration of the contract.</p>	MI 1: No Penalty	<p>Success against target will be measured on a quarterly basis throughout the duration of the contract.</p>

Service Level Agreements (SLAs)

1. The Contractor(s) shall ensure compliance with the Service Levels listed in Table 2 (SLAs Lot 2)
2. The Contractor(s) and the DfE shall monitor the Contractor's performance against each of the Service Levels listed in Table 2 (SLAs Lot 2)
3. The Contractor shall send to the DfE a quarterly performance report (an example template is provided at Annex X) with a Red, Amber or Green rating ("RAG rating") against each Service Level. Red would indicate failed to achieve or a high risk of failure to achieve, Amber would indicate medium risk of failing to achieve and Green indicates fully on track or achieved.

Remedial action in the event of failure to achieve SLAs

4. Without prejudice to any other rights under this Contract, if the Contractor fails to meet two (2) or more Service Levels for more than three (3) consecutive months, the

Contractor agrees that the DfE shall have the right to exercise (in its absolute and sole discretion) one or more of the following remedial actions:

- a. Upon request the DfE may require the Contractor to produce a Performance Improvement Plan, which the Contractor shall prepare and provide to the DfE within ten (10) Working Days of a written request. The Performance Improvement Plan shall be subject to approval by the DfE. The Contractor shall implement any approved Performance Improvement Plan as soon as reasonably practicable; and
 - b. The DfE may serve an Improvement Notice on the Contractor and the Contractor shall implement such requirements for improvement as set out in the Improvement Notice.
5. In the event that the DfE has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Contractor:
- a. Fails to implement such requirements for improvement as set out in the Improvement Notice; and/or
 - b. Fails to implement a Performance Improvement Plan approved by the DfE to the DfE's satisfaction;
 - c. Then (without prejudice to any other rights and remedies of termination provided for in this Contract), the DfE may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

Table 2 - SLAs- Lot 2

Subject	Service Level
Implementation Plan	The Contractor Implementation Plan (submitted by the Supplier as part of the ITT evaluation award criteria) must be agreed and signed-off by both parties within one-month post contract award. The Contractor will be measured against adherence to this plan up to and including the implementation 'go live' date.
Onboarding Support	The Contractor must ensure all appointees understand the overarching roles and responsibilities of a governor and/or trustee, the commitment required and the part they can play in contributing towards effective governance before applying and throughout the application and placement process. A record of their understanding must be made and held.
Reporting and Meetings	Submit to the DfE Contract Manager a completed quarterly report by the twenty-fifth (25 th) of the month following the end of the quarter, highlighting performance against all KPIs and SLAs, including the submission of all/agreed management information. An example reporting template is provided at Annex 1 of this document.
	Attend quarterly contract management meetings.
	Attend any ad hoc development and operational meetings as required by the department.

Administration/ Communication	Respond to one hundred per cent (100%) of queries and correspondence within three (3) working days from the date of receipt.
Complaints	The Contractor's Performance Manager (or appointed personnel) must respond to all complaints from service users orally by telephone or in person, as well as in writing, within five (5) working days from the date of the complaint.
Finance	Ensure that valid invoices are submitted to DfE within twenty (20) working days of the end of the relevant service period.
Commercial/Contract Management	Ensure that all Change Control Notices or Contract Variation documentation is signed by both Parties prior to any additional work being undertaken.
Regional engagement	The Contractor must react promptly and take any action identified by Regional School Commissioner (RSC)/ESFA offices, or other appropriate regional stakeholders, to help strengthen a trust/school board. Any requested action must be completed within a timescale agreed with the relevant RSC office on a case-by-case basis.
	The Contractor (of Lot 1) should meet regularly with RSC/ESFA offices to discuss trusts in scope of support and any changing priorities. The frequency of these meetings to be agreed between the Contractor and RSC teams, but should be held at least quarterly.
Stakeholder collaboration	The Contractor must work collaboratively with other governance stakeholders and the sector to better understand regional governance landscapes and needs. These stakeholders should include, but are not limited to, RSC offices, ESFA, Local Authorities, Diocese, Chambers of Commerce etc.
	The Contractor must develop and agree a Memorandum of Understanding (within two-months of contract signature) for how they will work effectively and collaboratively with other providers (where contracts for lots 1 and 2, are awarded to different lead providers) ensuring the services on offer have the highest collective impact and present a coherent offer to schools, academies, trusts, volunteers and employers.
	The Contractor should work collaboratively with other lead providers to deliver alumni network support to those volunteers recruited and appointed to help ensure the engagement, commitment, enthusiasm and success of those new to governance.

Performance management arrangements

1. The DfE shall monitor performance and progress against the contract KPIs, SLAs and Contractor's Implementation Plan on a quarterly basis and during performance review meetings. The Contractor shall cooperate with the DfE in this regard and provide any information and evidence reasonably required by the DfE within five (5) Working Days of a request being received.
2. The Contractor shall appoint a named Performance/Contract Manager who will cooperate with the DfE to ensure that the Contract is delivered as specified in the Contract and that Service Levels and KPIs are achieved.
3. The purpose of the performance review meetings is to encourage regular and open dialogue between the Parties. The Parties shall review performance, discuss opportunities for continuous improvement, and address any complaints or persistent problems or issues encountered.
4. Performance reviews shall be documented. The Contractor shall provide any information requested by the DfE to facilitate the reviews and arrange, where necessary, access to any of Contractor Premises or delivery locations, including those operated by Sub-Contractors.
5. The DfE may instruct the Contractor to take appropriate remedial action where the DfE reasonably considers that the Implementation Plan and/or a Performance Improvement Plan is not being complied with, and the Contractor must take such remedial action as requested by the DfE.
6. If there is a failure to achieve a Service Level or KPI, the Contractor shall use all reasonable endeavours to immediately minimise the impact of any failure and to prevent such a failure from recurring.
7. The Contractor shall ensure that all systems and processes used for the monitoring and recording of performance are robust and in accordance with the data and security requirements set out in the Contract.

Annex 1: Example Reporting Templates

Lot 2 - Maintained Schools and LGBs Example Reporting Template

<p>PERFORMANCE AGAINST KPIS</p> <p><u>KPI – Minimum volumes (MV1 – MV4)</u></p> <p>MV1: In year 1 (FY 2022-23) A minimum of 1225 appointments to boards of maintained schools or to academy LGBs.</p> <p>MV2: In year 2 (FY 2023-24) A minimum of 1250 appointments to boards of maintained schools or to academy LGBs.</p> <p>Per Annum:</p> <ul style="list-style-type: none"> MV3: A minimum of 30% of those placed should be to boards of Maintained Schools who have been rated as ‘Requires Improvement’ or ‘Inadequate’ by Ofsted, or into LGBs in trusts that are deemed to be of ‘high-need’ MV4: The remainder of the minimum appointments can be to maintained schools and academy LGBs via the ‘Directed or Organic’ routes.
<p>Performance against KPI:</p>
<p><u>KPI – Geographical spread (GS1 – GS2)</u></p> <p>Per annum:</p> <ul style="list-style-type: none"> GS1: A minimum of 8% of the total number of appointments must be made in each of the 8 RSC regions. GS2: No more than 25% of the total number of appointments can be made in any one RSC region⁴ GS3: At least 60% of those appointed and placed should be to schools or LGBs situated outside of London
<p>Performance against KPI:</p>
<p><u>KPI – Volunteer Characteristics (VC1 – VC4)</u></p> <p>Per annum:</p> <ul style="list-style-type: none"> VC1: At least 14% of those recruited and appointed should identify themselves as being from a BAME background VC2: A minimum of 25% of volunteers recruited and appointed should be aged between 18 to 39 VC3: A minimum of 25% of volunteers recruited and appointed should be aged between 40 to 59

⁴ The 8 RSC regions are: East of England and North-East London, East Midlands and the Humber, Lancashire and West Yorkshire, North of England, North-West London and South-Central England, South-East England and South London, South-East England, and the West Midlands

<ul style="list-style-type: none"> • VC4: no less than 40% of appointees should be male and no less than 40% of appointees should be female
Performance against KPI:
<u>KPI – Volunteer Expertise (VE1)</u> Per annum: <ul style="list-style-type: none"> • VE1: At least 60% of those placed onto a board, per annum, should have identified themselves as having >50% of the skills/expertise requested by the board.
Performance against KPI:
<u>KPI – Satisfaction (S1 – S3)</u> <ul style="list-style-type: none"> • Through supplier lead quality assurance processes the service must, per annum: <ul style="list-style-type: none"> ○ S1 Be identified as ‘good or higher’ by at least 90% of the volunteers placed ○ S2: Be identified as ‘good or higher’ by at least 90% of the boards whose vacancies are filled ○ S3: A minimum 30% survey response rate must be achieved for S1 and S2 above
Performance against KPI:
<u>KPI – Management Information (MI1)</u> <ul style="list-style-type: none"> • M1: All information requested (as set out in Document 6 and Document 10 of this tender) is submitted to the department on time.
Performance against KPI:
Other information to report on
Total number of volunteers recruited in quarter, with breakdowns showing region, expertise, age, gender, ethnicity and recruitment channel
Total number of new vacancies registered in quarter, with breakdowns showing region, school type and expertise required

Average and standard deviation of time taken from a single vacancy being registered to a) the Contractor offering individuals to fill the vacancy and b) the board confirming their intention to appoint to fill the vacancy
Frequency distribution of the number of volunteers offered per live vacancy
Frequency distribution of vacancies remaining unfilled by month since registered
Number of registered vacancies withdrawn, with breakdown of reasons given

PERFORMANCE AGAINST SLAs			
Subject	Service Level	RAG	Comments
Implementation Plan	The Contractor Implementation Plan (submitted by the Supplier as part of the ITT evaluation award criteria) must be agreed and signed-off by both parties within one-month post contract award. The Contractor will be measured against adherence to this plan up to and including the implementation 'go live' date.		
Onboarding Support	The Contractor must ensure all appointees understand the overarching roles and responsibilities of a governor and/or trustee, the commitment required and the part they can play in contributing towards effective governance before applying and throughout the application and placement process. A record of their understanding must be made and held.		
Reporting and Meetings	Submit to the DfE Contract Manager a completed quarterly report by the twenty-fifth (25 th) of the month following the end of the quarter, highlighting performance against all KPIs and SLAs, including the submission of all/agreed management information		
	Attend quarterly contract management meetings.		
	Attend any ad hoc development and operational meetings as required by the department.		
Administration/ Communication	Respond to one hundred per cent (100%) of queries and correspondence within three (3) working days from the date of receipt.		
Complaints	The Contractor's Performance Manager (or appointed personnel) must respond to all complaints from service users orally by telephone or in person, as well as in writing, within five (5) working days from the date of the complaint.		
Finance	Ensure that valid invoices are submitted to DfE within twenty		

	(20) working days of the end of the relevant service period.		
Commercial/Contract Management	Ensure that all Change Control Notices or Contract Variation documentation is signed by both Parties prior to any additional work being undertaken.		
Regional engagement	The Contractor must react promptly and take any action identified by Regional School Commissioner (RSC) offices to help strengthen a trust/school board. Any requested action must be completed within a timescale agreed with the relevant RSC office on a case-by-case basis		
	The Contractor (of Lot 1) should meet regularly with RSC/ESFA offices to discuss trusts in scope of support and any changing priorities. The frequency of these meetings to be agreed between the Contractor and RSC teams, but should be at least held quarterly.		
Stakeholder collaboration	The Contractor must work collaboratively with other governance stakeholders and the sector to better understand regional governance landscapes and needs. These stakeholders should include, but are not limited to, RSC offices, ESFA, Local Authorities, Diocese, Chambers of Commerce etc.		
	The Contractor must develop and agree a Memorandum of Understanding (within two-months of contract signature) for how they will work effectively and collaboratively with other providers (where contracts for lots 1 and 2, are awarded to different lead providers) ensuring the services on offer have the highest collective impact and present a coherent offer to schools, academies, trusts, volunteers and employers.		
	The Contractor should work collaboratively with other lead providers to deliver alumni network support to those volunteers recruited and		

	appointed to help ensure the engagement, commitment, enthusiasm and success of those new to governance.		
--	---	--	--

Key successes/ key activity completed in period

Issues/Risks

Comms/Marketing

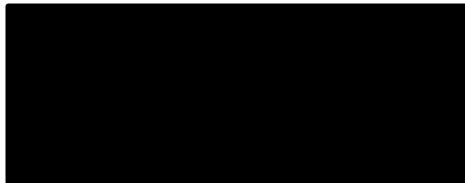
Future plans/priorities

Anything else to raise?

Schedule 5
Implementation Plan

1. The Contractor shall provide the Services in accordance with the Implementation Plan set out below.
2. The Implementation Plan shall be sufficiently detailed as is necessary to manage the Services and any proposed changes are subject to the Change Control Procedure.
3. The Contractor shall be responsible for implementing and managing the Services and for taking all such steps as may be necessary so as to ensure that from the Service Commencement Date the Contractor is able to provide the Services:
 - 3.1 in accordance with the provisions of the Contract; and
 - 3.2 in a manner that maintains the continuity of Services to the DFE.
4. The Contractor shall monitor its performance against the Implementation Plan and report to the DFE monthly (or more frequently if so required by the DFE) on its performance.

Implementation Plan (Embedded)



Schedule 6

Change Control Procedure

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

Change Control Note

:

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

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

Revised daily rate (if applicable)			
Impact on original contract (if applicable)			
Supporting Information (please attach all supporting documentation for this Change Control)			
Terms and Conditions	Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect.		
Variation Agreed <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> For the Contractor: Signature..... Full Name..... Title..... Date..... </td> <td style="width: 50%; vertical-align: top;"> For the DFE: Signature..... Full Name..... Title..... Date..... </td> </tr> </table>		For the Contractor: Signature..... Full Name..... Title..... Date.....	For the DFE: Signature..... Full Name..... Title..... Date.....
For the Contractor: Signature..... Full Name..... Title..... Date.....	For the DFE: Signature..... Full Name..... Title..... Date.....		

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

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

Schedule 7

Key Personnel and Key Sub Contractors

Key Personnel

The individuals listed in the table below are Key Personnel:

Name	Role	Period of Involvement
[REDACTED]	[REDACTED]	Throughout
<redacted> <redacted>	[REDACTED]	Throughout
<redacted> <redacted>	[REDACTED]	Throughout
<redacted> <redacted>	[REDACTED]	Throughout
<redacted> <redacted>	[REDACTED]	Throughout
<redacted> <redacted>	[REDACTED]	Throughout
<redacted> <redacted>	[REDACTED]	Throughout
<redacted> <redacted>	[REDACTED]	Throughout
<redacted> <redacted>	[REDACTED]	Throughout

Key Sub-Contractors

The Contractor may sub-contract its obligations under the Contract to the Sub-Contractors listed in the table below.

Key Sub-Contractor Name and Address (if not the same as the registered office)	Registered Office and Company Number	Related Product/Service Description	Sub-contract Price expressed as a percentage of total projected Charges over Term	Role in delivery of the Services

Schedule 8
General Data Protection Regulation (GDPR)

“Controller”, “Processor,” “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”	take the meaning given in the GDPR
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Processor 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; (iii) 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.
“GDPR”	the General Data Protection Regulation (Regulation (EU) 2016/679)
“Joint Controllers”	Where two or more Controllers jointly determine the purposes and means of processing
“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)

“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.

“Protective Measures”

appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those set out in the Contract.

“Sub-processor”

any third Party appointed to process Personal Data on behalf of the Processor related to this Contract

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

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 EU 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.

17.15 Where the Parties include two or more Joint Controllers as identified in Schedule 3a in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller agreement based on the terms outlined in Schedule 3b in replacement of Clauses 17.1-17.14 for the Personal Data under Joint Control.

SCHEDULE 8 ANNEX 1

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]
[REDACTED] The contact details of the Processor's Data Protection Officer are:
[REDACTED] 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 Schedule 8 Clause 1.1.
Subject matter of the processing	The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to schools.
Duration of the processing	For the duration of the agreement – 01/04/2022 – 31/03/2024 (31/03/2025)
Nature and purposes of the processing	<p>The nature of the processing includes collection, recording, structuring, storage, adaptation, restriction, erasure or destruction of data.</p> <p>The purposes include assessment of individuals, assessment of needs of governing boards, in order to match the most appropriate individual to a governing board, and therefore fulfill the contractual requirements.</p>
Type of Personal Data	name, address, date of birth, gender, ethnicity, skills.

Categories of Data Subject	Volunteers, members of the public in their capacity as potential volunteers, governing boards
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	The data will be retained for the duration of the contract and destroyed at the end of the contract term.

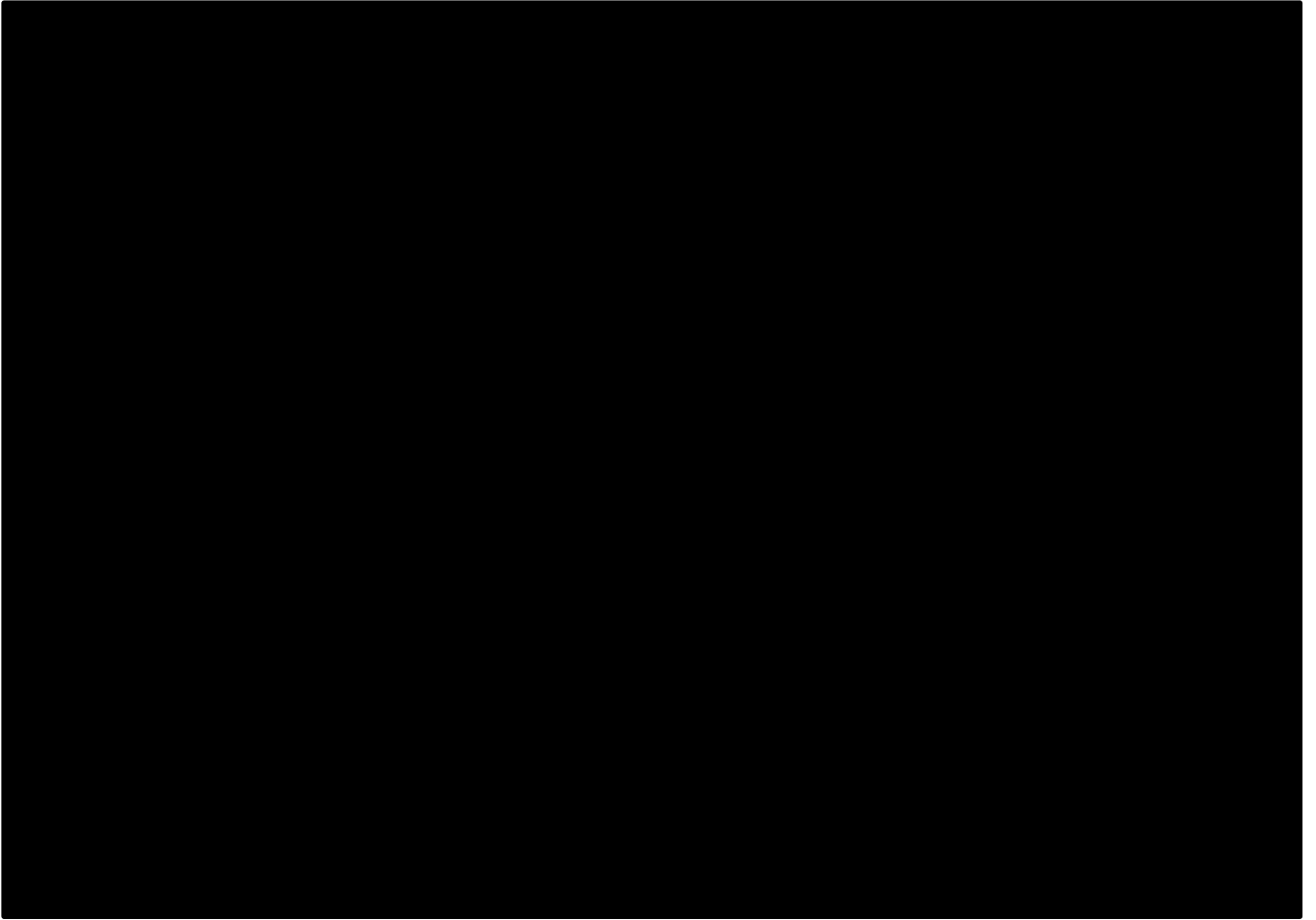
Schedule 9

Commercially Sensitive Information

- **Bid Summary, G2, G3, G4, G5, G6, G7, G8, G9, G10, G11, G12, All CVs of staff, G10 risk register, Modern slavery policy, organigram, IG signed document 8, IG signed document 9, Lot 2 pricing schedule information.**

Schedule 10

The Contractor's Solution (Embedded Document)





Schedule 11

Data Handling and Systems Assurance (Security)

Definitions

DFE SECURITY STANDARDS

12. Departmental Security Standards for Business Services and ICT Contracts

<p>“BPSS”</p> <p>“Baseline Personnel Security Standard”</p>	<p>means the Government’s HMG Baseline Personal Security Standard . Further information can be found at:</p> <p>https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</p>
<p>“CCSC”</p> <p>“Certified Cyber Security Consultancy”</p>	<p>is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC’s standards.</p> <p>See website:</p> <p>https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</p>
<p>“CCP”</p> <p>“Certified Professional”</p>	<p>is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession. See website:</p> <p>https://www.ncsc.gov.uk/information/about-certified-professional-scheme</p>
<p>“CPA”</p> <p>“Commercial Product Assurance”</p> <p>[formerly called “CESG Product Assurance”]</p>	<p>is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards.. See website:</p> <p>https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</p>
<p>“Cyber Essentials”</p> <p>“Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.</p>

	<p>There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to these providers:</p> <p>https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body</p>
<p>"Data"</p> <p>"Data Controller"</p> <p>"Data Protection Officer"</p> <p>"Data Processor"</p> <p>"Personal Data"</p> <p>"Personal Data requiring Sensitive Processing"</p> <p>"Data Subject", "Process" and "Processing"</p>	<p>shall have the meanings given to those terms by the Data Protection Act 2018</p>
<p>"Department's Data"</p> <p>"Department's Information"</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Contractor by or on behalf of the Department; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;</p>
<p>"DfE"</p> <p>"Department"</p>	<p>means the Department for Education</p>
<p>"Departmental Security Standards"</p>	<p>means the Department's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.</p>
<p>"Digital Marketplace / G-Cloud"</p>	<p>means the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.</p>

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”	<p>the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP).</p> <p>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.</p>
“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”	<p>means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.</p> <p>NCSC Guidance can be found at: https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</p> <p>The disposal of physical documents and hardcopy materials advice can be found at: https://www.cpni.gov.uk/secure-destruction</p>
“Security and Information Risk Advisor” “CCP SIRA” “SIRA”	<p>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</p>
“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

- 1.1. The Contractor shall be aware of and comply the relevant [HMG security policy framework](#), [NCSC guidelines](#) and where applicable DfE Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 1.2. 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](#) - [Action Note 09/14](#) 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.
- 1.3. Where clause 1.2 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).
- 1.4. The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service and will handle 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).
- 1.5. 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.
- 1.6. 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.
- 1.7. 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.

- 1.8 The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to:
- physical security controls;
 - good industry standard policies and 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.
- 1.9 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.
- 1.10 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.
- 1.11 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>.
- 1.12 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".
- 1.13 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.
- 1.14 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.

- 1.15 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.

- 1.16 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.

- 1.17 All Contractor or sub-contractor employees who handle Departmental Data shall have annual awareness training in protecting information.

- 1.18 The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.

- 1.19 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.

- 1.20 The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using 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.
- 1.21 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.
- 1.22 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.
- 1.23 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.
- 1.24 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.
- 1.25 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.