

Date: 30/08/2022

A Contract for Education Services

At HMPYOI Wetherby

Between

The Secretary of State for Justice

And

LTE Group (Trading as Novus)

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This contract is dated:

PARTIES:

- (1) THE SECRETARY OF STATE FOR JUSTICE of 102 Petty France, London, SW1H 9AJ, acting as part of the Crown (the “**Authority**”);

AND

- (2) LTE Group Further Education Corporation trading as Novus whose registered office is Openshaw Campus and Administrative Centre, Ashton Old Road, Openshaw, Manchester, M11 2WH (the “**Supplier**”)

(each a “**Party**” and together the “**Parties**”).

WHEREAS

- A. Following a competitive tender process, the Authority wishes to appoint the Supplier to provide education services and related goods in a Secure Setting as described in the Specification and the Supplier agrees to provide those goods and services in accordance with these terms and conditions.

NOW IT IS HEREBY AGREED:

A. GENERAL

A1 Definitions and Interpretation

- A1.1 Unless the context otherwise requires the following terms shall have the meanings given to them below:

“**Additional Services**” means those services which may be purchased from time to time as described as such in Schedule 24 (Optional Services and Additional Services);

“**Affected Party**” means the Party seeking to claim relief in respect of a Force Majeure Event;

“**Affiliate**” means in relation to a body corporate, any other entity which directly or indirectly Controls is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

“**Annual Delivery Plan**” or “**ADP**” has the meaning given to it in clause F6.1(a) (Delivery of Annual Delivery Plan);

“**ADP Approval Certificate**” has the meaning given to it in clause F6.2(b)i) (Approval of Annual Delivery Plan (first Contract Year));

“**ADP Grounds of Objection**” means the grounds for objecting to the Annual Delivery Plan as set out in clause F6.2(c) (Approval of Annual Delivery Plan (first Contract Year));

“**ADP Notice of Non-Compliance**” has the meaning given to it in clause F6.2(b)ii) (Approval of Annual Delivery Plan (first Contract Year));

“**Approve**”, “**Approval**” and “**Approved**” means the prior written consent of the Authority;

“**Approved Sub-Contractor**” means those Sub-Contractors identified as such in Schedule 23 (Approved Sub-Contractors);

“Associated Person” means as it is defined in section 44(4) of the Criminal Finances Act 2017;

“Audit” means the Authority’s right to:

- a) verify the accuracy of the Prices and any other amounts paid and payable by the Authority (including proposed or actual variations to them in accordance with the Contract);
- b) verify the costs of the Supplier (including the costs of all or any Sub-Contractors and third party suppliers) in connection with the provision of the Services and Goods;
- c) verify the Supplier’s and each Sub-Contractor’s compliance with the applicable Law;
- d) verify the Supplier’s and each Sub-Contractor’s compliance with and progress against the Supplier’s responses to the ITT social value questions as included under the sub-heading entitled ‘Question 5 – Social Values’ at Part B of Schedule 1;
- e) identify or investigate actual or suspected breach of this Contract and/or Schedule 8 (Statutory Obligations and Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Sub-Contractors or their ability to provide the Services and/or Goods;
- g) obtain such information as is necessary to fulfil the Authority’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- h) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;
- i) carry out the Authority’s internal and statutory audits and to prepare, examine and/or certify the Authority’s annual and interim reports and accounts;
- j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

“Authorised Representative” means the Authority representative named in a CCN as authorised to approve Changes.

“Authority Break Point Dates” means each of:

- a) the fourth anniversary of the Commencement Date;
- b) the fifth anniversary of the Commencement Date; and
- c) the sixth anniversary of the Commencement Date;

“Authority Cause” means any breach by the Authority of any Dependencies (except to the extent that it is the result of any act or omission by the Authority to which the Supplier has contributed and/or caused and/or permitted);

“Authority Data” means:

- a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of the Authority; or (ii) which the Supplier is required to generate, process, store or transmit pursuant to the Contract; or
- b) any Personal Data for which the Authority is the Controller;

“Authority Equipment” means any property, other than real property, issued or made available to the Supplier by the Authority (or other part of the criminal justice system) in connection with this Contract including as set out in lists to be provided by the Authority from time to time;

“Authority ICT System” means any part of the Authority System owned by the Authority and/or licensed to the Authority by a third party and which interfaces with the Supplier System or which is provided by the Authority to the Supplier in connection with this Contract;

“Authority Premises” means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Supplier or its Sub-Contractors for provision of the Services and/or Goods;

“Authority Software” means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Supplier for the purposes of providing the Services and/or Goods;

“Authority System” means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services and/or Goods;

“Baseline Security Requirements” means the security requirements in Annex 1 of Schedule 6 (Information Security & Assurance);

“BPSS” means the Government’s Baseline Personnel Security Standard for any individuals working with or on behalf of a Government;

“Breach of Security” means an occurrence of:

- a) any unauthorised access to or use of the ICT Environment and/or any Information Assets and/or Authority Data (including Confidential Information) in connection with the Contract;
- b) the loss (physical or otherwise) and/or unauthorised disclosure of any Information Assets and/or Authority Data (including Confidential Information) in connection with the Contract, including copies; and/or
- c) any part of the Supplier System ceasing to comply with the Certification Requirements;

“BS 8555” means the standard published to help organisations improve their environmental performance by the British Standards Institution;

“CCN” means a change control notice in the form set out in Schedule 3 (Change Control);

“Certification Requirements” means the requirements in paragraph 5 of Schedule 6 (Information Security & Assurance);

“CESG” means the Government’s Communications Electronics Security Group;

“Change” means a change in the Specification, the Price or any of the terms or conditions of the Contract implemented in accordance with clause F4;

“Change in Law” means any change in Law which affects the performance of the Services and/or provision of the Goods which comes into force after the Commencement Date;

“Change of Control” means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

“Commencement Date” means 1 September 2022;

“Commercially Sensitive Information” means the information listed in Schedule 4 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to:

- a) the Price; and/or
- b) the Supplier’s business and investment plans,

which the Supplier has informed the Authority would cause the Supplier significant commercial disadvantage or material financial loss if it was disclosed;

“Comparable Supply” means the supply of services to another customer of the Supplier which are the same or similar to any of the Services;

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all Personal Data. Confidential Information shall not include information which:

- a) was public knowledge at the time of disclosure otherwise than by breach of clause D4;
- b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- d) is independently developed without access to the Confidential Information;

“Continuous improvement plan” means has the meaning given to it in clause B17.1;

“Contract” means these terms and conditions, the attached Schedules and any other provisions the Parties expressly agree are included;

“Contract Year” means a consecutive period of twelve (12) Months starting on the Commencement Date;

“Contracting Authority” means any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations;

“Contracts Finder” means the Government’s portal for public sector procurement opportunities;

“Control” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** are interpreted accordingly;

“Controller” means as it is defined in GDPR;

“Copyright” has the meaning as set out in section 1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988;

“Core Common Curriculum Requirements” means those curriculum requirements listed in paragraph 4.1 of Schedule 1 (Specification);

“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 government ministers, government departments, government offices and government agencies;

“Crown Body” means a body which is part of the Crown;

“Data Loss Event” means any event which results, or may result, in unauthorised access to Personal Data held by the Supplier under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data;

“Data Protection Impact Assessment” means an assessment by the Controller of the effect of the envisaged processing on the protection of Personal Data;

“Data Protection Legislation” means:

- a) the GDPR and applicable implementing Laws;
- b) the DPA to the extent that it relates to the processing of Personal Data and privacy; and
- c) all applicable Laws relating to the processing of Personal Data and privacy;

“Data Protection Officer” means as it is defined in the GDPR;

“Data Subject” means as it is defined in the GDPR;

“Data Subject Request” means 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;

“Database Rights” means as rights in databases are defined in section 3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988;

“Default” means any breach of the obligations or warranties 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 Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other;

“Delivery Plan” means a detailed and costed description of how the Services commissioned by the Authority for a Secure Setting will be delivered in a specified Contract Year such plan being developed and agreed in accordance with Schedule 19 (Contract Management);

“Dependencies” means the obligations to be performed (or procured to be performed) by the Authority as set out in Schedule 16 (Dependencies) and **“Dependency”** shall be construed accordingly;

“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 and as extended to NICs 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 the date of this Contract;

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

“End Date” means the date specified in clause A5.1;

“Equipment” means the Supplier’s equipment, consumables, plant, materials and such other items supplied and used by the Supplier from time to time in connection with the performance of the Contract and for the avoidance of doubt does not include Inherited Assets or Authority Equipment;

“Existing IPR” means any and all IPRs that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Commencement Date or otherwise);

“Exit Day” means as it is defined in the European Union (Withdrawal) Act 2018;

“Financial Year” means the period from 1st April each year to the 31st March the following year;

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“Force Majeure Event” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, flood, storm or earthquake, or disaster, and for the purposes of this definition the following shall not constitute a Force Majeure Event:

- a) any event or other consequence arising as a result of or in connection with the COVID-19 pandemic which was reasonably foreseeable on the Commencement Date;
- b) any industrial dispute relating to the Supplier or the Staff; and/or
- c) any other failure in the Supplier's supply chain;

"GDPR" means the EU General Data Protection Regulation (Regulation (EU) 2016/679) as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;

"General Anti-Abuse Rule" means:

- d) the legislation in Part 5 of the Finance Act 2013; and
- e) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs;

"General Change in Law" means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the exercise of 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 with the relevant industry or business sector;

"Goods" means any goods supplied by the Supplier (or by a Sub-Contractor) under the Contract including any modified or alternative goods;

"Government" means Her Majesty's Government of the United Kingdom;

"Government Buying Standards" means the standards published here:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

"Governors" means the most senior manager who is in charge of each Secure Setting that is accountable for both defining and securing delivery of the Services and Goods. For the avoidance of doubt this also includes directors and controllers as the content implies in relation to private prisons;

"Greening Government Commitments" means the Government's policy to reduce its effects on the environment, the details of which are published here:

<https://www.gov.uk/government/collections/greening-government-commitments>

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others;

“Health and Safety Policy” means the Ministry of Justice’s health and safety policy, available from time to time at the following web address:

<https://intranet.justice.gov.uk/documents/2017/12/moj-corporate-health-and-safety-policy.pdf>

“HMRC” means HM Revenue & Customs;

“ICT Environment” means the Authority System and the Supplier System;

“Impact Assessment” means an assessment of the impact of a Change request completed in good faith, including:

- a) details of the impact of the proposed Change on the Services and/or Goods and the Supplier's ability to meet its other obligations under the Contract;
- b) details of the cost of implementing the proposed Change;
- c) details of the ongoing costs required by the proposed Change when implemented, including any increase or decrease in the Prices (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- d) a timetable for the implementation, together with any proposals for the testing of the Change; and

such other information as the Authority may reasonably request in (or in response to) the Change request;

“Information” has the meaning given under section 84 of the FOIA;

“Information Assets” means definable pieces of information stored in any manner which are determined by the Authority to be valuable and relevant to the Services and/or Goods;

“Inherited Assets” means the assets provided by the Authority to the Supplier as identified as such in lists to be provided by the Authority from time to time;

“Insolvency Event” in relation to a person means:

- a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
 - i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
 - ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
- b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;

- c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- f) where that person is a company, a LLP or a partnership:
 - i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
 - iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
 - iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or
- g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

"Insurances" has the meaning given to it in clause G1.8;

"Intellectual Property Rights" or **"IPR"** means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off;

"IP Materials" has the meaning given to it in clause E1.6(b);

"ISMS" means the Supplier's information and management system and processes to manage information security as set out in paragraph 2.3 of Schedule 6 (Information Assurance & Security);

"ISO 14001" means the family of standards related to environmental management published by the International Organisation for Standardisation;

"IT Health Check" means penetration testing of systems under the Supplier's control on which Information Assets and/or Authority Data are held which are carried out by third parties in accordance with the CHECK scheme operated by CESG or to an equivalent standard;

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003;

“Key Personnel” mean the people named in the Tender as key personnel, if any;

“Key Performance Indicators (KPIs)” has the meaning set out in Schedule 14 (Performance Management);

“Key Role” means the roles set out in clause B7.1;

“Know-How” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods);

“Law” any applicable law, statute, bye law, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), guidance or code of practice, rule of court or directives, delegated or subordinate legislation in force from time to time and as amended from time to time;

“Learner” means a child or young person subject to detention by Her Majesty’s Prison and Probation Service engaged in learning and skills activities with the Supplier at the Secure Setting;

“Lock Down” means a disruption that requires Learners to remain locked in their rooms at the Secure Setting;

“Losses” means losses, liabilities, damages, costs, fines and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Mandatory Policies” means the policies of the Authority including (without limit) those set out in Schedule 17 (Mandatory Policies) and as otherwise notified by the Authority to the Supplier, as updated from time to time;

“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 Authority would otherwise derive from:

- a) a substantial portion of the Contract; or
- b) any of the obligations set out in [clauses D1, D2, D3, D4, G3, 0 or paragraph [9] of Schedule 8 (Statutory Obligations and Corporate Social Responsibility)];

“Milestone” means the milestones identified as such in the Mobilisation Plan;

“Milestone Date” means the dates on which Milestones are to be achieved as set out in the Mobilisation Plan;

“Mobilisation Plan” has the meaning given in schedule 13 (Mobilisation Plan);

“Modern Slavery Helpline” means the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available by telephone on 08000 121 700 or online at: <https://www.modernslaveryhelpline.org/report>

“Month” means calendar month and **“Monthly”** shall be interpreted accordingly;

“MSA” means the Modern Slavery Act 2015;

“New IPR” means

- a) IPR in items developed or created by the Supplier, its Affiliates and/or any Sub-Contractor (or by a third party on behalf of the Supplier, or such Affiliate and/or Sub-Contractor) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- b) IPR in or arising as a result of or in connection with the performance of the Supplier’s obligations under this Contract and all updates and amendments to the same;

including all Intellectual Property Rights falling within the Prescribed Documentation and/or in or to procedures, methods and know-how (all as may be modified and upgraded from time to time) but excluding the Supplier’s Existing IPR;

“NICs” means National Insurance Contributions;

“Occasion of Tax Non-Compliance” means:

- a) any tax return of the Supplier 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 Supplier 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 Supplier 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 Supplier 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;

“Optional Services” means those services which may be purchased from time to time as described as such in Schedule 24 (Optional Services and Additional Services);

“Personal Data” means as it is defined in the GDPR;

“Personal Data Breach” means as it is defined in the GDPR;

“Prescribed Documentation” means any item or document which is produced by the Supplier and relates to the Services and/or Goods, including, teaching materials, drawings, reports (including a progress report on special cases of Learners, in a form to be notified by

the Authority from time to time) and records (including Learner records), data sheets, schedules, presentation brochures, photographs, court evidence, models and samples;

“Price” means the price (excluding any applicable VAT) payable to the Supplier by the Authority under the Contract, as set out in Schedule 2 (Prices and Invoicing) for the full and proper performance by the Supplier of its obligations under the Contract;

“Prison Education DPS” a dynamic purchasing system concluded by the Authority for the provision of prison education services that do not fall within the definition of the Core Common Curriculum Requirements;

“Processor” means as it is defined in GDPR;

“Prohibited Act” means:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority 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 (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
 - iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;
- 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;

“Property” means the property, other than real property, issued or made available to the Supplier by the Authority in connection with the Contract;

“Protective Measures” means 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 measures adopted;

“PSI 67/2011” is the Prison Service Instruction published on 1st November 2011 as amended from time to time relating to the searching of the person the current version of which is available at:

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2011>

“PSI 10/2012” is the Prison Service Instruction published on 26 March 2012 as amended from time to time relating to the Conveyance and Possession of Prohibited Items and other Related Offences the current version of which is available at:

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2012>

“PSI 07/2014” is the Prison Service Instruction published on 2nd June 2014 as amended from time to time relating to security vetting the current version of which is available at:

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2014>

“PSI 24/2014” is the Prison Service Instruction published on 1st May 2014 as amended from time to time relating to information assurance the current version of which is available at:

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2014>

“Receipt” means the physical or electronic arrival of the invoice at the address specified in clause C1.12 or at any other address given by the Authority to the Supplier for the submission of invoices from time to time;

“Reduced Performance” has the meaning set out in paragraph 5.1 of Schedule 14 (Performance Management);

“Regulations” means the Public Contract Regulations 2015 (SI 2015/102);

“Regulator Correspondence” means any correspondence from the Information Commissioner's Office, or any successor body, in relation to the processing of Personal Data under the Contract;

“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 Authority;

“Relevant Conviction” means a conviction that is relevant to the nature of the Services and/or Goods or as listed by the Authority and/or relevant to the work of the Authority;

“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 Supplier is established;

“Replacement Supplier” means any third-party supplier appointed by the Authority to supply any goods and/or services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract;

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

“Required Insurances” means the insurances required by Schedule 20 (Insurance Requirements);

“Results” means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

- a) prepared by or for the Supplier for use in relation to the performance of its obligations under the Contract; or
- b) the result of any work done by the Supplier or any Staff in relation to the provision of the Services;

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

“Secure Setting” means HMPYOI Wetherby;

“Security Plan” means the plan prepared by the Supplier which includes the matters set out in paragraph 3.2 of Schedule 6 (Information Security & Assurance);

“Security Policy Framework” means the Government’s Security Policy Framework (available from the Cabinet Office’s Government Security Secretariat) as updated from time to time;

“Security Test” means a test carried out by the Supplier, the Authority or a third party to validate the ISMS and the security of all relevant processes and systems on which Information Assets and/or Authority Data are held;

“Services” means the services set out in Schedule 1 (Specification and Tender) (including any modified or alternative services) together with all Additional Services and all other obligations to be performed by the Supplier in accordance with this Contract;

“Services Commencement Date” means the date on which the Supplier is to begin providing Services which address the Core Common Curriculum Requirements which shall be 1 September 2022;

“Sites” means any premises (including the Authority Premises, the Supplier’s premises or third party premises) from, to or at which:

- a) the Services are (or are to be) provided; or
- b) the Supplier manages, organises or otherwise directs the provision or the use of the Services;

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the European Commission’s Recommendation of 6 May 2003 available at:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF>

“Specific Change in Law” means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;

“Specification” means the description of the Goods and Services to be supplied under the Contract as set out in Part A (Specification) of Schedule 1 (Specification and Tender) including, where appropriate, the Key Personnel, the Sites and the Standards;

“SSCBA” means the Social Security Contributions and Benefits Act 1992;

“Staff” means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any of its Sub-Contractors engaged in the performance of the Supplier’s obligations under the Contract;

“Standards” means any:

- a) standards published by British Standards Institution (BSI), the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
- b) standards detailed in the specification in Part A (Specification) of Schedule 1 (Specification and Tender);
- c) relevant Government codes of practice and guidance applicable from time to time;

“Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Authority 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;

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Supplier related to the Contract;

“Supplier Assets” means all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Authority Assets;

“Supplier Non-Performance” means a failure by the Supplier to carry out its obligations in accordance with this Contract which for the avoidance of doubt includes a failure to achieve Key Performance Indicators and/ or a failure to comply with the Mobilisation Plan;

“Supplier Software” means software which is proprietary to the Supplier, including software which is or will be used by the Supplier for the purposes of providing the Services and which is set out in Schedule 5 (Supplier and Third Party Software);

“Supplier System” means the information and communications technology system used by the Supplier in performing the Services including the Supplier Software, the Equipment and related cabling (but excluding the Authority System);

“Tender” means the Supplier’s tender submitted in response to the Authority’s invitation to suppliers for offers to supply the Services as set out in Part B (Tender) in Schedule 1 (Specification and Tender);

“Term” means the period from the Commencement Date to the End Date or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract;

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

“Third Party Beneficiary” has the meaning given to it in clause I5.1 (Rights of Third Parties);

“Third Party IP Claim” has the meaning given to it in clause E1.10 (Intellectual Property Rights);

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Supplier to provide the Services including the software and which is specified as such in Schedule 5 (Supplier and Third Party Software);

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

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

“Valid Invoice” means an invoice containing the information set out in clause C1.2;

“VAT” means value added tax charged or regulated in accordance with the Value-Added Tax Act 1994;

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

“Vulnerability Correction Plan” means a remedial plan prepared by the Supplier to address vulnerabilities identified in an IT Health Check report;

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

A1.2 In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) references to a person include natural persons, a company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (d) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (f) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (g) the Schedules form an integral part of the Contract and have effect as if set out in full in the body of the Contract. A reference to the Contract includes the Schedules;
- (h) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (i) references to the Contract are references to the Contract as amended from time to time; and
- (j) any reference in the Contract which immediately before Exit Day is a reference to (as it has effect from time to time):
 - i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (**“EU References”**) which is to form part of domestic law by

application of s.3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of s.3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

- ii) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

A1.3 If there is any conflict between the clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) firstly, the clauses;
- (b) Part A (Specification) of Schedule 1 (Specification and Tender) and Schedule 14 (Performance Management); then
- (c) any other Schedules and their Annexes (other than Part B (Tender) of Schedules 1 (Specification and Tender) and its Annexes); and finally
- (d) Part B (Tender) of Schedule 1 (Specification and Tender) and its Annexes.

A2 Authority Obligations

A2.1 Save as expressly provided, the Authority's obligations under the Contract are the Authority's obligations in its capacity as a contracting counterparty and nothing in the Contract operates as an obligation on, or in any other way fetters or constrains, the Authority in any other capacity.

A2.2 The exercise by the Authority of its duties and powers in any other capacity shall not make it liable to the Supplier in any way.

A2.3 Subject to clause A2.4, in the event of Supplier Non-Performance arising from an Authority Cause:

- (a) the Authority shall not be entitled to treat the Supplier Non-Performance as a Default or terminate a Contract under clause H2 to the extent that such Default arises from such Authority Cause;
- (b) the Supplier shall be entitled to relief from its obligations to the extent of the Authority Cause; and
- (c) the Supplier shall not be entitled to suspend the continued supply of Services.

A2.4 Clause A2.3 shall be subject to the Supplier:

- (a) giving notice to the Authority as soon as reasonably practicable and in any event within five (5) Working Days of becoming aware of the Authority Cause;
- (b) demonstrating that the Supplier Non-Performance would not have occurred but for the Authority Cause; and
- (c) mitigating the impact of the Authority Cause.

A3 Supplier's Status

- A3.1 The Supplier is an independent contractor and nothing in the Contract creates a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the Contract.
- A3.2 The Supplier shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead another person to believe that the Supplier is acting as the agent or employee of the Authority.
- A3.3 The Supplier acknowledges and agrees that it is appointed as a non-exclusive provider of the Services to the Authority and that the Authority may purchase services which are the same as or similar to the Services by other means including using the Prison Education DPS.

A4 Mistakes in Information

The Supplier is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Supplier in connection with the Services and Goods and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

A5 Term

- A5.1 The Contract starts on the Commencement Date and ends on the seventh anniversary of the Commencement Date (the "**End Date**") unless it is terminated early in accordance with the Contract.

B. THE GOODS AND SERVICES

B1 Basis of the Contract

- B1.1 In consideration of the Supplier's performance of its obligations under and in accordance with the Contract the Authority shall pay the Supplier the Price in accordance with clause C1.
- B1.2 The terms and conditions contained in the Contract apply to the exclusion of any other terms and conditions the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

B2 Quality

- B2.1 The Supplier shall perform its obligations under the Contract:
- (a) in compliance with Schedule 1 (Specification and Tender) and the Contract;
 - (b) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
 - (c) in accordance with Good Industry Practice, all applicable Laws and the Mandatory Policies; and
 - (d) in accordance with the standards and requirements set out in Schedule 8 (Statutory Obligations and Corporate Social Responsibility).

B3 Goods

- B3.1 Subject to clauses B4.2 and B4.3, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1 (Contract Performance)), pass to the Authority on completion of delivery.
- B3.2 Title in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1), pass to the Authority on completion of delivery (or payment, if earlier).
- B3.3 If and to the extent that in providing the Services, the Supplier provides any Goods:
- (a) all Goods delivered must be new (or as new if recycled), unused and of recent origin;
 - (b) all manufacturer warranties covering the Goods must be assignable to the Authority and shall be assigned at no cost upon request from the Authority;
 - (c) the Supplier warrants that it has full and unrestricted title in all the Goods at the date of transfer of title; and
 - (d) the Supplier shall deliver the Goods on the date and to the location of delivery specified by the Authority during the Authority's working hours on Working Days.

B4 Services

- B4.1 The Supplier acknowledges that the Authority relies on the skill and judgment of the Supplier in the supply of the Services and the performance of the Supplier's obligations under the Contract.
- B4.2 Where the Supplier installs equipment as part of the Services, the Supplier shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Supplier:
- (a) accept the installation; or
 - (b) reject the installation and inform the Supplier why, in the Authority's reasonable opinion, the installation does not satisfy the requirements in this Contract.
- B4.3 If the Authority rejects the installation pursuant to clause B4.2(b), the Supplier shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, comply with the requirements in the Contract, the Authority may terminate the Contract with immediate effect.
- B4.4 The installation is complete when the Supplier receives a notice issued by the Authority in accordance with clause B4.2(a). Notwithstanding acceptance of any installation in accordance with clause B4.2(a), the Supplier is solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.
- B4.5 During the Term, the Supplier shall:
- (a) at all times have all licences, approvals and consents necessary to enable the Supplier and Staff to carry out the installation;

- (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
- (c) not, in delivering the Services, in any manner endanger the safety or convenience of Learners, Authority staff (including contractors) or the public.

B4.6 The Authority may inspect the manner in which the Supplier supplies the Services at the Sites during normal business hours on reasonable notice. The Supplier shall provide at its own cost all such facilities as the Authority may reasonably require for such inspection. In this clause B4, Services include planning or preliminary work in connection with the supply of the Services.

B4.7 If reasonably requested to do so by the Authority, the Supplier shall co-ordinate its activities in supplying the Services with those of the Authority and other contractors engaged by the Authority.

B4.8 Not used.

B4.9 If the Authority informs the Supplier in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements the Supplier shall, subject to clause A2.3, at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

B4.10 If, in delivering the Goods or Services, the Supplier is required to visit Authority Premises which are Secure Settings, the Supplier shall comply with Schedule 7 (Secure Settings).

B5 Assets and Equipment

B5.1 The Authority will sell and Supplier will purchase the Inherited Assets in consideration for the payment by the Supplier to the Authority of £1 (receipt of which is hereby acknowledged). The Supplier will only use the Inherited Assets in connection with the provision of the Services. Such transfer shall become effective on such date as the Authority may notify to the Supplier.

B5.2 The Authority will make the Authority Equipment available (on a non exclusive basis) to the Supplier for use in connection with the provision of the Services and the Supplier will not use the Authority Equipment for any other purpose. Such use of the Authority Equipment may commence from such date as the Authority may notify to the Supplier.

B5.3 The Supplier will ensure that the Inherited Assets and the Authority Equipment are kept in good condition and will maintain and refresh the Inherited Assets as necessary throughout the Term (subject to any exceptions that are specifically agreed with the Authority). Subject to prior agreement with the Authority, selected Inherited Assets nominated by the Supplier can be decommissioned if not required for delivery of the Services. The Supplier shall be responsible for the cost of such decommissioning.

B5.4 The Supplier shall be responsible for:

- (a) the maintenance, repair, replacement, insurance and security of all Inherited Assets, Authority Equipment and Equipment; and
- (b) undertaking appropriate safety checks on the Inherited Assets, Authority Equipment and Equipment and for ensuring that it complies with Law.

- B5.5 The Inherited Assets and Authority Equipment are provided on an “as is” basis and all warranties and implied terms relating to such assets are excluded to the maximum extent permitted by Law.
- B5.6 All Inherited Assets, Authority Equipment and Equipment shall be at the risk of the Supplier. The Authority shall have no liability for any loss of or damage to any of it unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the negligence or wilful default of the Authority and in that event the Authority's liability shall be proportionate to the damage caused by the Authority.
- B5.7 The Supplier shall provide for the transportation of the Equipment to and from the Authority Premises.
- B5.8 The Supplier shall be responsible for all costs associated with the provision and/or use of assets (including the Inherited Assets and Authority Equipment) in connection with the provision of the Services. The Supplier will not receive any additional funds from the Authority in relation to the purchase and /or provision of such assets in order to enable it to provide the Services.
- B5.9 Subject to clauses B5.1 and B5.2, the Supplier shall provide all assets and equipment which are reasonably necessary in connection with the provision of the Services.
- B5.10 Where use of the Inherited Assets and Authority Equipment is subject to permissions that may be required from third parties (including without limit maintenance arrangements) then the Parties will take all such steps as may be reasonable to procure such permissions.
- B5.11 The Supplier shall make the Inherited Assets, Authority Equipment and any other Equipment used by the Supplier in connection with the provision of the Services available to other persons (nominated by the Authority from time to time) who provide education services to the Authority to use in connection with such services. Such use of Inherited Assets and Equipment may be provided on reasonable commercial terms as notified by the Supplier from time to time.
- B5.12 The Supplier shall ensure that it keeps an accurate and up to date register of all assets used by it in connection with the provision of the Services (including details of the Inherited Assets and Authority Equipment) and will provide a copy of such register to the Authority on demand and in any event the Supplier shall provide an up to date copy of such list to the Authority at least 3 months prior to the End Date or as soon as reasonably practicable where this Contract is terminated.
- B5.13 Paragraph [8] of Schedule 15 (Exit Management) shall apply to assets on expiry or earlier termination of this Contract.
- B5.14 The Supplier shall provide all Equipment as is necessary for the provision of the Services and shall list all such Equipment in the register referred to in clause [B5.12 above].
- B5.15 In the case of any item of the Equipment which is leased to the Supplier, the Supplier shall ensure that throughout the Term it and its sub-contractors comply with all its obligations under the lease and in particular that the item of the Equipment is maintained fully in accordance with the requirements of the lessor.
- B5.16 Where required by the Authority, the Supplier shall provide the Authority with such details as the Authority may require in respect of any of the Equipment which is leased to the Supplier, including copies of the relevant lease and any other relevant documentation to enable the

Authority to satisfy itself that the Supplier or relevant sub-contractor has complied with its obligations under the lease.

- B5.17 The Supplier shall not deliver any Equipment to, or begin any work on, the Sites without Approval.
- B5.18 Equipment brought onto the Sites remains the property of the Supplier.
- B5.19 If the cost of any Equipment is reimbursed to the Supplier such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Supplier will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.
- B5.20 The Supplier shall, at the Authority's written request, at its own cost and as soon as reasonably practicable:
- (a) remove immediately from the Sites Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- B5.21 Within 20 Working Days of the end of the Term, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Authority Premises in a clean, safe and tidy condition. The Supplier shall make good any damage to those Authority Premises and any fixtures and fitting in the Authority Premises which is caused by the Supplier or Staff.

Authority Software

- B5.22 Where the Authority instructs the Supplier to use Authority Software, the Supplier shall use such Authority Software for the purpose specified by the Authority provided that the Authority shall arrange for access to such Authority Software, funding of licence costs and making available user material where available to the Authority.

B6 Key Personnel

- B6.1 The Supplier acknowledges that Key Personnel are essential to the proper provision of the Services.
- B6.2 Key Personnel shall not be released from supplying the Services without Approval except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.
- B6.3 The Authority may interview and assess any proposed replacement for Key Personnel and any replacements to Key Personnel are subject to Approval. Such replacements 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.
- B6.4 The Authority shall not unreasonably withhold approval under clauses B6.2 or B6.3. Such agreement is conditional on appropriate arrangements being made by the Supplier to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.

B6.5 The Supplier shall:

- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
- (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

B7 Key Personnel Management Structure

B7.1 The Supplier's management structure should include functions and Key Roles which cover the areas described in the table below. The exact structure, roles and organisation are matters for the Supplier to determine.

Function	Description of Role
Head of Education	The most senior member of the Supplier's staff and key Supplier contact for the Authority and/or Buyer as necessary, having the authority to make key decisions about service rectification and financial issues relating to the Service and overall responsibility for effective delivery and quality assurance of all Services.
Special Needs Coordinator	[As defined in Part 3, Regulation 50 of The Special Educational Needs and Disability Regulations 2014.

B8 Staff

B8.1 The Supplier shall ensure that all Staff shall:

- (a) be appropriately trained, qualified and experienced;
- (b) act in a responsible and professional manner;
- (c) deliver the Services with the due care and diligence expected of a skilled professional;
- (d) be vetted in accordance with Good Industry Practice and the Mandatory Policies; and
- (e) comply with all requirements and policies concerning conduct on the Authority Premises.

B8.2 The Supplier shall replace with alternative suitably qualified persons any Staff whom the Authority deems in its absolute discretion to be unsuitable to undertake work under a Contract.

B8.3 The Supplier shall provide a list of Supplier Personnel requiring access to the Authority Premises including the reasons access is required.

B8.4 The Supplier shall ensure that Staff respond flexibly and within agreed timescales set by the Authority in response to requests, including changes to planned Services or cancellations.

- B8.5 Staff shall not be expected to be involved in 'rub down' or 'wandering' of Learners entering or leaving the learning environment or movement of Learners other than within the learning environment.
- B8.6 The Supplier shall indemnify the Authority against all claims brought by any person arising from any breach of the Contract by the Supplier and/or any negligent act or omission of the Supplier or any Staff in connection with the provision of the Services.
- B8.7 The Authority may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Authority Premises:
- (a) any member of the Staff; or
 - (b) any person employed or engaged by any member of the Staff,
- whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable.
- B8.8 The Supplier shall comply with all security requirements of the Authority while on the Authority Premises and ensure that all Staff comply with such requirements.
- B8.9 At the Authority's written request, the Supplier shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all people who may require admission to the Authority Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- B8.10 The Supplier shall ensure that all Staff who have access to the Authority Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.
- B8.11 The Supplier shall co-operate with any investigation relating to security carried out by the Authority or on behalf of the Authority and, at the Authority's request:
- (a) use reasonable endeavours to make available any Staff requested by the Authority to attend an interview for the purpose of an investigation; and
 - (b) provide documents, records or other material in whatever form which the Authority may reasonably request or which may be requested on the Authority's behalf, for the purposes of an investigation.

B9 Head of Education

- B9.1 The Supplier shall appoint the Head of Education who, for the avoidance of doubt, shall be a Key Personnel.
- B9.2 The Supplier shall not remove or replace the Head of Education unless:
- (a) requested to do so by the Authority;
 - (b) the person is on long-term sick leave;
 - (c) the person resigns from their employment with the Supplier; or
 - (d) the Supplier obtains the prior written consent of the Authority.

- B9.3 The Supplier shall inform the Authority of the identity and background of any replacement for the Head of Education as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may withhold its consent to any such proposed appointment if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- B9.4 Any replacement shall be as, or more, qualified as the previous incumbent and fully competent to carry out the tasks assigned to the Head of Education whom he or she has replaced.

B10 Due Diligence

Save as the Authority may otherwise direct, the Supplier is deemed to have inspected the Sites (either in person or virtually) before submitting its Tender and to have completed due diligence in relation to all matters connected with the performance of its obligations under the Contract.

B11 Licence to Occupy

- B11.1 Any land or Authority Premises made available from time to time to the Supplier by the Authority in connection with the Contract are on a non-exclusive licence basis free of charge and are used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier has the use of such land or Authority Premises as licensee and shall vacate the same on termination of the Contract.
- B11.2 The Supplier shall limit access to the land or Authority Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with other persons working concurrently on such land or Authority Premises as the Authority may reasonably request.
- B11.3 If the Supplier requires modifications to the land or Authority Premises such modifications are subject to Approval and shall be carried out by the Authority at the Supplier's cost. The Authority shall undertake Approved modification work without undue delay.
- B11.4 The Supplier shall (and shall ensure that any Staff on the Authority Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Authority Premises as determined by the Authority.
- B11.5 The Contract does not create a tenancy of any nature in favour of the Supplier or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority may use the Authority Premises owned or occupied by it in any manner it sees fit.
- B11.6 If keys (including key cards) to any part of the Authority Premises are issued to the Supplier, the Supplier shall be deemed by this Contract to have given an undertaking that the keys will not be copied, lent or used by any person other than a person authorised in writing by the Supplier and the Supplier shall supply to the Authority the names and addresses of such authorised persons. It shall be the responsibility of the Supplier to ensure that the windows, doors or other access points opened or unsecured by the Staff be firmly closed and secured where necessary, both while the Services are being provided, and after any part of the Services have been provided, and that in the event that any failure to do so results in losses or other costs falling upon the Authority, such losses and costs shall be recoverable from the Supplier by the Authority. If any keys are lost by the Supplier, or Staff, then the Supplier shall immediately notify the Authority. The Supplier shall be liable for all losses, or other costs

falling upon the Authority as a result of the loss of such keys including the loss or damage to property and the costs of replacing locks and lost keys.

B12 Offers of Employment

B12.1 Neither Party shall, directly or indirectly, solicit or procure (otherwise than by general advertising or under TUPE, any employees or contractors (including the Staff) of the other Party who are directly employed or engaged in connection with the provision of the Services while such persons are employed or engaged and for a period of 6 Months thereafter.

B12.2 If either Party breaches the clause B12.1, it shall pay the other Party a sum equivalent to 20% of the annual base salary payable by the Party in breach in respect of the first year of person's employment.

B12.3 The Parties agree that the sum specified in clause B12.2 is a reasonable pre-estimate of the loss and damage which the party not in breach would suffer if there was a breach of clause B12.1

B13 Employment

B13.1 The Parties shall comply with the provisions of Schedule 18 (Staff Transfer).

B14 Preparedness to operate

B14.1 Mobilisation Plan

From and including the Commencement Date until immediately before the Services Commencement Date, the Supplier shall implement and comply with the Mobilisation Plan having followed the process set out at Schedule 13 (Mobilisation Plan) to ensure that the Services relating to the Core Common Curriculum Requirements are able to be provided on and from the Services Commencement Date.

B15 Notification of Delay

B15.1 Notice

Without prejudice to the Supplier's obligation to comply with the Mobilisation Plan, and notwithstanding clause A2.4, if at any time the Supplier becomes aware that there will be or is likely to be a delay such that any element of the Mobilisation Plan may not be delivered by the applicable date and/or the Services Commencement Date may not be achieved on or before the Services Commencement Date, the Supplier shall as soon as reasonably practicable and in any event within five (5) Working Days of becoming aware of the likely delay give notice to the Authority to that effect specifying the reason for the delay or likely delay and an estimate of the likely effect of the delay on the provision of the Services including the achievement of the Services Commencement Date.

B15.2 Supply of Information

Following service of a notice by the Supplier pursuant to clause B15.1 (Notice), the Supplier shall promptly supply to the Authority any further information relating to the delay which:

- (a) is received by the Supplier; or
- (b) is reasonably requested by the Authority.

B15.3 Additional Resources

In respect of any anticipated or actual delay, the Supplier shall, without prejudice to the Authority's other rights or remedies, take all remedial action that is reasonable to rectify or to prevent the delay from taking place or recurring (as appropriate).

B15.4 Duty to Mitigate

The Supplier shall take all reasonable steps to mitigate the delay and any consequences of the delay which is the subject of a notice pursuant to clause B15.1 (Notice).

B15.5 Liability for Delay

Without prejudice to the Supplier's obligation to comply with the Mobilisation Plan, and subject to clause A2.3, to the extent that the Supplier has failed to implement and comply with the Mobilisation Plan and as a consequence the Supplier is unable to provide the Services on or before the Services Commencement Date, the Authority, without prejudice to its or their other rights or remedies, may recover from the Supplier the costs reasonably incurred in making other arrangements for the provision of the Services up to the Services Commencement Date provided that in the payment of such compensation by the Supplier only the difference in cost between the amount that would have been paid by the Authority for the provision of the Services by the Supplier and amounts reasonably incurred by the Authority for the delivery of the Services by an alternative provider (which the Authority shall take reasonable steps to mitigate) shall be paid by the Supplier to the Authority. The amount which would have been paid to the Supplier shall, for the purposes of this clause B15.5 (Liability for Delay), be calculated on the basis of the Contract Price that would have been payable pursuant to Schedule 2 (Prices and Invoicing).

B16 Business Continuity

The Parties shall comply with the provisions of Schedule 12 (Business Continuity & Disaster Recovery).

B17 Innovation, Transformation and Service Improvement

B17.1 The Supplier shall produce prior to the start of the second (2nd) Contract Year and prior to the start of each subsequent Contract Year thereafter during the Term a plan for improving the provision of Services and/or reducing the Prices (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Authority's Approval. The Continuous Improvement Plan shall accompany and be produced to the same timetable as the Delivery Plan referred to in Schedule 19 (Contract Management).

B17.2 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this clause B17 (Innovation, Transformation and Service Improvement). As part of this obligation the Supplier shall report to the Authority's representative quarterly from the Services Commencement Date on:

- (a) the emergence of new and evolving relevant technologies which could improve any of the Services, and those technological advances potentially available to the Supplier or the Authority which the Authority may wish to adopt; and/or
- (b) new or potential improvements to any of the Services including the quality, responsiveness, procedures, likely performance mechanisms and customer support services in relation to the Services; and/or

- (c) new or potential improvements to the interfaces or integration of the Services which might result in efficiency or productivity gains or in reduction of operational risk; and/or
- (d) advances or improvements in the delivery of education that would result in greater educational attainment by Learners; and/or
- (e) changes in business processes and ways of working that would enable any of the Services to be delivered at lower costs and/or at greater benefits to the Authority.

B17.3 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.

B17.4 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall raise a Change.

C. PAYMENT

C1 Payment and VAT

C1.1 The Supplier shall submit invoices to the Authority in accordance with this clause C1 and Schedule 2 (Prices and Invoicing).

C1.2 A Valid Invoice is an invoice which includes the information set out in Part 2 of Schedule 2 (Prices and Invoicing) and, if requested by the Authority:

- (a) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Site on the day;
- (b) the name of the individuals to whom the timesheet relates and hourly rates for each;
- (c) identification of which individuals are Supplier's staff and which are Sub-Contractors' staff;
- (d) the address of the Site and the date on which work was undertaken;
- (e) the time spent working on the Site by the individuals concerned;
- (f) details of the type of work undertaken by the individuals concerned;
- (g) details of plant or materials operated and on standby;
- (h) separate identification of time spent travelling and/or meal or rest breaks; and
- (i) if appropriate, details of journeys made and distances travelled.

C1.3 The Authority shall not pay an invoice which is not a Valid Invoice.

C1.4 The Authority shall not pay the Supplier's overhead costs unless Approved and overhead costs include, without limitation: facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.

C1.5 Not used.

- C1.6 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Supplier shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts.
- C1.7 The Supplier may claim expenses only if they are clearly identified, supported by original receipts and Approved.
- C1.8 If the Authority pays the Supplier prior to the submission of a Valid Invoice this payment is on account of and deductible from the next payment to be made.
- C1.9 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Supplier. All payments made by the Authority to the Supplier are on an interim basis pending final resolution of an account with the Supplier in accordance with the terms of this clause C1.
- C1.10 The Supplier shall:
- (a) add VAT to the Price at the prevailing rate as applicable and show the amount of VAT payable separately on all invoices as an extra charge. If the Supplier fails to show VAT on an invoice, the Authority is not, at any later date, liable to pay the Supplier any additional VAT;
 - (b) ensure that a provision 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; and
 - (c) not suspend the Services unless the Supplier is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.
- C1.11 The Supplier indemnifies the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause C1.11 shall be paid by the Supplier to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- C1.12 The Authority shall:
- (a) in addition to the Price and following Receipt of a Valid Invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract;
 - (b) pay all sums due to the Supplier within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:

APinvoices-NMS-U@gov.sscl.com (the Authority's preferred option); or SSCL – National Offender Management Service, PO Box 741, Newport, Gwent, NP10 8FZ;
- and
- (c) accept and process for payment Valid Invoices submitted for payment electronically if they comply with the standard on electronic invoicing.

- C1.13 For the purposes of clause C1.12 (c) an electronic invoice complies with the standard on electronic invoicing if it complies with the European standard and any of the syntaxes published in Commission Implementing decision (EU) 2017/1870.
- C1.14 Any late payment of undisputed invoices by the Authority will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank.
- C1.15 The Supplier shall ensure that all Sub-Contractors are paid, in full, within thirty (30) days of receipt of a valid, undisputed invoice.
- C1.16 Notwithstanding any provision of clause D4 (Confidential Information), if the Supplier fails to pay a Sub-Contractor's invoice in accordance with clause C1.15, the Authority shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).
- C1.17 If the Authority is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, goods or services used by the Supplier in the supply of the Services, then the Authority may:
- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - (b) enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.
- C1.18 The Supplier may submit invoices in arrears no earlier than the first day of the month following the month in which the Services were performed.

C2 Recovery of Sums Due

- C2.1 If under the Contract any sum of money is recoverable from or payable by the Supplier to the Authority (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier from the Authority under the Contract or under any other agreement with the Authority or the Crown.
- C2.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, is a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C2.3 The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- C2.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

D. PROTECTION OF INFORMATION

D1 Authority Data

D1.1 The Supplier shall:

- (a) not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under the Contract or as otherwise Approved;
- (b) preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data;
- (c) not delete or remove any proprietary notices contained within or relating to the Authority Data;
- (d) to the extent that Authority Data is held and/or processed by the Supplier, supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification;
- (e) perform secure back-ups of all Authority Data and ensure that up-to-date back-ups are stored securely off-site. The Supplier shall ensure that such back-ups are made available to the Authority immediately upon request;
- (f) ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework;
- (g) identify, and disclose to the Authority on request those members of Staff with access to or who are involved in handling Authority Data;
- (h) on request, give the Authority details of its policy for reporting, managing and recovering from information risk incidents, including losses of Personal Data, and its procedures for reducing risk;
- (i) notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take if it has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason; and
- (j) comply with Schedule 6 (Information Assurance & Security).

D1.2 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:

- (a) require the Supplier (at the Supplier's cost) to restore or procure the restoration of Authority Data and the Supplier shall do so promptly; and/or
- (b) itself restore or procure the restoration of Authority Data, and be repaid by the Supplier any reasonable costs incurred in doing so.

D2 Data Protection and Privacy

D2.1 The Parties acknowledge that for the purposes of Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A

Party may act as:

- (a) “Controller” (where the other Party acts as the “Processor”);
- (b) “Processor” (where the other Party acts as the “Controller”);
- (c) “Joint Controller” (where both Parties are considered to jointly control the same Personal Data); or
- (d) “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 9 (Data Processing) which scenario or scenarios are intended to apply under this Contract.

Where the Authority is Controller and the Supplier its Processor

D2.2 Where the Supplier is Processor, the only processing that it is authorised to do is listed in Schedule 9 (Data Processing) by the Authority.

D2.3 The Supplier shall:

- (a) notify the Authority immediately if it considers any Authority instructions infringe the Data Protection Legislation;
- (b) at its own cost, provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to starting any processing. Such assistance may, at the Authority’s discretion, include:
 - i) a systematic description of the envisaged processing operations and the purpose of the processing;
 - ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
- (c) in relation to any Personal Data processed in connection with its obligations under the Contract:
 - i) process that Personal Data only in accordance with Schedule 9 (Data Processing) unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - ii) ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event having taken account of the nature of the data to be protected, harm that might result from a Data Loss Event, the state of technological development and the cost of implementing any measures;
- (d) ensure that:

- i) Staff do not process Personal Data except in accordance with the Contract (and in particular Schedule 9 (Data Processing));
- ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to Personal Data and ensure that they:
 - A) are aware of and comply with the Supplier's duties under this clause D2;
 - B) are subject to appropriate confidentiality undertakings with the Supplier 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 Authority or as otherwise allowed under the Contract;
 - D) have undergone adequate training in the use, care, protection and handling of the Personal Data
- (e) not transfer Personal Data outside the UK unless Approved and:
 - i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or s.75 of the DPA) as determined by the Authority;
 - ii) the Data Subject has enforceable rights and effective legal remedies;
 - iii) the Supplier 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 Authority in meeting its obligations); and
 - iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (f) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Supplier is required by Law to retain the Personal Data;
- (g) subject to clause D2.4, notify the Authority immediately if it:
 - i) receives a Data Subject Request (or purported Data Subject Request);
 - ii) receives a request to rectify, block or erase any Personal Data;
 - iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;

- v) 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
- vi) becomes aware of a Data Loss Event.

D2.4 The Supplier's obligation to notify under clause D2.3 (g) includes the provision of further information to the Authority in phases as details become available.

D2.5 Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under clause D2.3 (g) (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- (a) the Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Authority following any Data Loss Event; and
- (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office or any consultation by the Authority with the Information Commissioner's Office.

D2.6 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause D2.

D2.7 The Supplier shall allow audits of its Data Processing activity by the Authority or the Authority's designated auditor.

D2.8 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.

D2.9 Before allowing any Sub-processor to process any Personal Data in connection with the Contract, the Supplier shall:

- (a) notify the Authority in writing of the intended Sub-processor and processing;
- (b) obtain Approval;
- (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause D2 such that they apply to the Sub-processor; and
- (d) provide the Authority with such information regarding the Sub-processor as the Authority reasonably requires.

D2.10 The Supplier remains fully liable for the acts and omissions of any Sub-processor.

D2.11 Notwithstanding the provisions of clause E4, the Authority 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 the Contract).

D2.12 The Parties shall take account of any guidance published by the Information Commissioner's Office and, notwithstanding the provisions of clause F4, the Authority may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance published by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

D2.13 In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall comply with the terms set out in Annex 1 to Schedule 9 (Data Processing).

Where the Parties are Independent Controllers of Personal Data

D2.14 With respect to Personal Data provided by one Party to the other Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.

D2.15 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

D2.16 Where a Party has provided Personal Data to the other Party in accordance with clause D2.14, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

D2.17 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of the Contract.

D2.18 Each Party shall only provide Personal Data to the other Party:

- (a) to the extent necessary to perform the respective obligations under the Contract;
- (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
- (c) where it has recorded it in Schedule 9 (Data Processing).

D2.19 Each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

D2.20 Each shall maintain a record of its Personal Data processing activities under the Contract in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.

D2.21 Where either Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract ("**the Request Recipient**"):

- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
- (b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
 - ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

D2.22 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to the Contract and shall:

- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
- (b) implement any measures necessary to restore the security of any compromised Personal Data;
- (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

D2.23 Notwithstanding the general application of clauses D2.2 to D2.12 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with clauses D2.14 to D2.22.

D2.24 This clause D2 applies during the Term and indefinitely after its expiry.

D3 Official Secrets Acts and Finance Act

D3.1 The Supplier shall comply with:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

D4 Confidential Information

D4.1 Except to the extent set out in this clause D4 or if disclosure or publication is expressly allowed 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 consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

- D4.2 The Supplier hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.
- D4.3 If required by the Authority, the Supplier shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in a form approved by the Authority. The Supplier shall maintain a list of the non-disclosure agreements completed in accordance with this clause D4.3.
- D4.4 If requested by the Authority, the Supplier shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Supplier shall ensure that Staff, professional advisors and consultants are aware of the Supplier's confidentiality obligations under the Contract.
- D4.5 The Supplier may disclose the Authority's Confidential Information only to Staff who are directly involved in providing the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- D4.6 The Supplier shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.
- D4.7 Clause D4.1 shall not apply to the extent that:
- (a) 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;
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - (e) it is independently developed without access to the other Party's Confidential Information.
- D4.8 Nothing in clause D4.1 prevents the Authority disclosing any Confidential Information obtained from the Supplier:
- (a) for the purpose of the examination and certification of the Authority's accounts;
 - (b) 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 Authority has used its resources;
 - (c) to Parliament and Parliamentary committees;
 - (d) to any Crown Body or any Contracting Authority and the Supplier hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities 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 any Contracting Authority; or

(e) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses D4.8 (d) and (e) the Authority 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.

D4.9 Nothing in clauses D4.1 to D4.6 prevents 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.

D4.10 The Authority shall use reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause D4.8 is made aware of the Authority's obligations of confidentiality.

D4.11 If the Supplier does not comply with clauses D4.1 to D4.8 the Authority may terminate the Contract immediately on notice.

D4.12 To ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Supplier shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.

D4.13 The Supplier shall:

- (a) immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches;
- (b) use best endeavours to recover such Confidential Information or data however it may be recorded;
- (c) co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data; and
- (d) at its own expense, alter any security systems at any time during the Term at the Authority's request if the Authority reasonably believes the Supplier has failed to comply with clause D4.12.

D5 Freedom of Information

D5.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.

D5.2 The Supplier shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and shall:

- (a) give the Authority a copy of all Information in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
- (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and

- (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.

D5.3 The Authority 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 FOIA and/or the EIR.

D6 Publicity, Branding and Media

D6.1 The Supplier shall not:

- (a) make any press announcements or publicise the Contract or its contents in any way;
- (b) use the Authority's name, brand or logo in any publicity, promotion, marketing or announcement of order; or
- (c) use the name, brand or logo of any of the Authority's agencies or arms-length bodies in any publicity, promotion, marketing or announcement of orders

without Approval.

D6.2 Each Party acknowledges that nothing in the Contract either expressly or impliedly constitutes an endorsement of any products or services of the other Party (including the Services and the ICT Environment) and each Party shall not conduct itself in such a way as to imply or express any such approval or endorsement.

D6.3 The Supplier shall use reasonable endeavours to ensure that its Staff and professional advisors comply with clause D6.1.

E. INTELLECTUAL PROPERTY

E1 Intellectual Property Rights

E1.1 Each Party shall keep ownership of its own Existing IPR. The Supplier gives the Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR used in connection with the Services to enable it to:

- (a) receive and use the Services;
- (b) make use of services provided by a Replacement Supplier to enable a smooth transfer of services to the Replacement Supplier; and
- (c) make use of services provided by any other providers of education services (subject to the prior consent of the Supplier which shall not be unreasonably withheld or delayed).

E1.2 Where the Authority makes available to the Supplier the use of Authority procured software, any use of such software shall be on and subject to the terms of such licences as are applicable to such software.

E1.3 Any New IPR created under this Contract shall be owned by the Authority. The Authority gives the Supplier a licence to use:

- (a) any Authority Existing IPR for the purpose of fulfilling its obligations under this Contract during the Term;
- (b) any New IPR on a non-exclusive, perpetual, royalty-free, worldwide and irrevocable basis including the right for the Supplier to sub-license, transfer, novate or assign to third parties for any purpose including (without limit) commercial exploitation of the same.

E1.4 Where a Party acquires ownership of IPRs that is inconsistent with the allocation of title set out under this Contract, it shall assign in writing such IPRs as it has acquired to the other Party on request and at its own cost do all things reasonably necessary to complete such transfer.

E1.5 Neither Party shall have the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as provided in this clause E or otherwise agreed in writing.

E1.6 All Intellectual Property Rights in:

- (a) the Results; or
- (b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Supplier by or on behalf of the Authority (together with the Results, the "**IP Materials**")

shall vest in the Authority (save for Copyright and Database Rights which shall vest in Her Majesty the Queen) and the Supplier shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Supplier of its obligations under the Contract.

E1.7 The Supplier hereby assigns:

- (a) to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the IP Materials. This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier; and
- (b) to Her Majesty the Queen, with full title guarantee, all Copyright and Database Rights which may subsist in the IP Materials and shall execute all documents and do all acts as are necessary to execute these assignments.

E1.8 The Supplier shall:

- (a) waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;
- (b) 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 Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority 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 Authority to

sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Supplier or to any other third party supplying goods and/or services to the Authority ("**Indemnified Persons**");

- (c) not infringe any Intellectual Property Rights of any third party in supplying the Services; and
- (d) during and after the Term, indemnify and keep indemnified the Authority and Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority and Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause E1.8, except to the extent that any such claim results directly from:
 - i) items or materials based upon designs supplied by the Authority; or
 - ii) the use of data supplied by the Authority which is not required to be verified by the Supplier under any provision of the Contract.

E1.9 The Authority shall notify the Supplier in writing of any claim or demand brought against the Authority or Indemnified Person for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Supplier to the Authority.

E1.10 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Supplier or Indemnified Person) arising from the performance of the Supplier's obligations under the Contract ("**Third Party IP Claim**"), provided that the Supplier shall at all times:

- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
- (b) take due and proper account of the interests of the Authority; and
- (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

E1.11 The Authority shall, at the request of the Supplier, afford to the Supplier all reasonable assistance for the purpose of contesting any Third-Party IP Claim and the Supplier shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not be required to indemnify the Authority under this clause E1.11 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E1.8 (d) i) and ii).

E1.12 The Authority shall not, without the Supplier's consent, make any admissions which may be prejudicial to the defence or settlement of any Third-Party IP Claim.

E1.13 If any Third-Party IP Claim is made or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Authority and any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E1.8 (b) and G2.1 (g)) use its best endeavours to:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or

- (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and if the Supplier is unable to comply with clauses E1.13 (a) or (b) within 20 Working Days of receipt by the Authority of the Supplier's notification the Authority may terminate the Contract immediately by notice to the Supplier.

E1.14 The Supplier grants to the Authority and, if requested by the Authority, to a Replacement Supplier, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Commencement Date and which the Authority (or the Replacement Supplier) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

F. CONTROL OF THE CONTRACT

F1 Contract Performance

- F1.1 The Supplier shall immediately inform the Authority if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.
- F1.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter, the Authority may carry out a review of the performance of the Supplier (a "**Review**"). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to):
 - (a) the Supplier's delivery of the Services;
 - (b) the Supplier's contribution to innovation in the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services;
 - (c) a review of future requirements in relation to the Services; and
 - (d) progress against key milestones.
- F1.3 The Supplier shall provide at its own cost any assistance reasonably required by the Authority to perform Reviews including the provision of data and information.
- F1.4 The Authority may produce a report (a "**Review Report**") of the results of each Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Supplier's obligations under the Contract.
- F1.5 The Authority shall give the Supplier a copy of the Review Report (if applicable). The Authority shall consider any Supplier comments and may produce a revised Review Report.
- F1.6 The Supplier shall, within 10 Working Days of receipt of the Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Review Report.
- F1.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Supplier's failure to meet its obligations under the Contract identified by the Review Report, or those which result from the Supplier's failure to meet the Authority's

expectations notified to the Supplier or of which the Supplier ought reasonably to have been aware) shall be implemented at no extra cost to the Authority.

F2 Remedies

F2.1 If the Authority reasonably believes:

- (a) the Supplier has committed a Material Breach it may, without prejudice to its other rights and remedies (including under clause H2 (Default)), do any of the following:
 - i) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier has demonstrated to the Authority's reasonable satisfaction that the Supplier will be able to supply the Services in accordance with the Specification;
 - ii) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
 - iii) terminate the Contract in accordance with clause H2.
- (b) the Supplier has not provided the Services in accordance with this Contract, it may, without prejudice to its other rights and remedies (including under clause H2 (Default)), withhold or reduce payments to the Supplier in such amount as the Authority reasonably deems appropriate in each particular case.

F2.2 Without prejudice to its right under clause C2 (Recovery of Sums Due), the Authority may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services.

F3 Transfer and Sub-Contracting

F3.1 Except where both clauses F3.10 and F3.11 apply, the Supplier shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such actions shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract does not relieve the Supplier of any of its obligations or duties under the Contract.

F3.2 By entering into this Contract, the Authority Approves the Sub-Contractors appointed by the Supplier and listed in Schedule 24 (Approved Sub-Contractors) as at the date of this Contract and in the event that the Authority subsequently Approves additional Sub-Contractors pursuant to clause F3.1, such schedule shall be amended to include the name of such Approved Sub-Contractor.

F3.3 The Supplier is responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Supplier shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.

F3.4 The Supplier shall ensure that Sub-Contractors retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with clause F5 (Audit). If any Sub-Contractor does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim

or invoice made by the Supplier on the basis of such documents or work carried out by the Sub-Contractor.

F3.5 If the Authority has consented to the award of a Sub-Contract, the Supplier shall ensure that:

- (a) the Sub-Contract contains:
 - i) a right for the Supplier to terminate the Sub-Contract if the Sub-Contractor does not comply with its legal obligations in connection with Data Protection Legislation, environmental, social or labour law; and
 - ii) obligations no less onerous on the Sub-Contractor than those on the Supplier under the Contract in respect of data protection in clause D1 and D2
- (b) the Sub-Contractor includes a provision having the same effect as set out in clause F3.5 (a) in any Sub-Contract which it awards; and
- (c) copies of each Sub-Contract are sent to the Authority immediately after their execution.

F3.6 Unless Approved otherwise, the Supplier shall, in respect of Sub-Contract opportunities arising during the Term from or in connection with the provision of the Goods and/or Services:

- (a) advertise on Contracts Finder those that have a value in excess of £25,000;
- (b) within 90 days of awarding a Sub-Contract, update the notice on Contracts Finder with details of the Sub-Contractor;
- (c) monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder and awarded during the Term;
- (d) provide reports on the information in clause F3.6 (c) to the Authority in the format and frequency reasonably specified by the Authority;
- (e) promote Contracts Finder to its suppliers and encourage them to register on Contracts Finder; and
- (f) ensure that each advertisement placed pursuant to F3.6 (a) includes a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder.

F3.7 The Supplier shall, at its own cost, supply to the Authority by the end of each Financial Year during the Term, for the previous Financial Year:

- (a) the total revenue received from the Authority pursuant to the Contract;
- (b) the total value of all its Sub-Contracts;
- (c) the total value of its Sub-Contracts with SMEs; and
- (d) the total value of its Sub-Contracts with VCSEs.

F3.8 The Authority may from time to time change the format and the content of the information required pursuant to clause F3.7.

- F3.9 If the Authority believes there are:
- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Supplier shall replace or not appoint the Sub-Contractor; or
 - (b) non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Supplier to replace or not appoint the Sub-Contractor and the Supplier shall comply with such requirement.
- F3.10 Notwithstanding clause F3.1, the Supplier may assign to a third party (the “**Assignee**”) the right to receive payment of the Price or any part thereof due to the Supplier (including any interest which the Authority incurs under clause C1 (Payment and VAT)). Any assignment under this clause F3.10 is subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C2 (Recovery of Sums Due);
 - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Authority receiving notification under both clauses F3.11 and F3.12.
- F3.11 If the Supplier assigns the right to receive the Price under clause F3.10, the Supplier or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F3.12 The Supplier shall ensure that the Assignee notifies the Authority of the Assignee’s contact information and bank account details to which the Authority can make payment.
- F3.13 Clause C1 continues to apply in all other respects after the assignment and shall not be amended without Approval.
- F3.14 Subject to clause F3.15, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
 - (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier’s obligations under the Contract.
- F3.15 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F3.16, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F3.16 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F3.14 to a body which is not a Contracting Authority or if there is a

change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):

- (a) the rights of termination of the Authority in clauses H1 and H2 are available to the Supplier in respect of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Supplier.

F3.17 The Authority may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F3.18 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the Contract.

F4 Change

F4.1 The Parties acknowledge and agree that Changes shall only be made in accordance with this clause F4.

F4.2 Either Party may request a Change subject to the terms of this clause F4.

F4.3 Either Party may request a Change by notifying the other Party in writing of the Change by completing the Change Request Form set out in Schedule 3 (Change Control). The Party requesting the Change shall give the other Party sufficient information and time to assess the extent and effect of the requested Change.

F4.4 Where:

- (a) the Authority requests a Change, the Supplier shall carry out an Impact Assessment in respect of the same and provide the Authority with such Impact Assessment within 20 Working Days following receipt of the request for a Change; and
- (b) the Supplier requests a Change, it shall provide an Impact Assessment to the Authority at the same time as requesting the Change.

F4.5 If the Party receiving the request for a Change is:

- (a) the Authority and the Authority accepts the Change, it shall confirm it in writing to the Supplier;
- (b) the Supplier, the Supplier shall:
 - i) notify the Authority that it can accept the Change as requested, and in which case the Authority shall confirm in writing that the Change is binding; or
 - ii) notify the Authority that it can only accept the Change under certain circumstances, in which case, the Supplier shall provide an amended request for Change to the Authority and the Authority shall either suggest amendments

in which case such amended request for Change shall follow the process in this clause F4 or the Authority shall refuse the amended request for in which case clause F4.6 shall apply.

- F4.6 If the Supplier is unable to accept a Change requested by the Authority or if the Parties are unable to agree a change to the Price, the Authority may:
- (a) allow the Supplier to fulfil its obligations under the Contract without the Change; or
 - (b) terminate the Contract immediately except where the Supplier has already delivered all or part of the Services or where the Supplier can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I1 (Dispute Resolution).
- F4.7 A Change takes effect only when it is recorded in a CCN validly executed by both Parties.
- F4.8 The Supplier is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Supplier in addition to the warranties and representations set out in clause G2.
- F4.9 Clauses F4.7 and F4.8 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Change in order to address the emergency. In an emergency, Changes may be approved by a different representative of the Authority. However, the Authorised Representative may review such a Change and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Change.

F5 Audit

- F5.1 The Supplier shall:
- (a) 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, all expenditure reimbursed by the Authority, and all payments made by the Authority;
 - (b) on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract;
 - (c) make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the Services;
 - (d) allow authorised representatives of the Authority and/or the National Audit Office to examine the Supplier's records and documents relating to the Contract and provide such copies and oral or written explanations as may reasonably be required; and
 - (e) allow 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 Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The

Supplier shall provide such explanations as are reasonably required for these purposes.

F6 Annual Service Delivery Plan

F6.1 Delivery of Annual Delivery Plan

- (a) The Supplier shall, on or before the date which is two (2) Months before each anniversary of the Services Commencement Date, provide to the Authority's Representative a plan (the "**Annual Delivery Plan**") to show how it will provide the Services in the next twelve months.
- (b) The Supplier shall ensure that each Annual Delivery Plan shall contain:
 - i) the Supplier's staff handbook;
 - ii) utilisation rates of the Supplier's Staff used by the Supplier to provide the Services;
 - iii) the delivery plan requirements set out in Schedule 19 (Contract Management); and
 - iv) such other information as the Authority may reasonably request from time to time.

F6.2 Approval of Annual Delivery Plan (first twelve months following Service Commencement Date)

- (a) The initial draft Annual Delivery Plan is set out in Schedule 25 (Draft Annual Delivery Plan).
- (b) Within twenty (20) Working Days after the Commencement Date, in respect of the draft Annual Delivery Plan in Schedule 23 (Draft Annual Delivery Plan) in respect of the first Contract Year, the Authority's Representative shall either:
 - i) issue a certificate (the "**ADP Approval Certificate**") confirming that the Annual Delivery Plan has been produced in accordance with the requirements of the Contract; or
 - ii) issue a notice (an "**ADP Notice of Non-Compliance**") stating that the ADP Approval Certificate has not been issued, specifying the grounds on which the ADP Notice of Non-Compliance is based (provided that such grounds shall be one or more of the grounds set out in clause F6.2(c) (Approval of Annual Delivery Plan (first twelve months **following Service Commencement Date**)) and specifying any matters that must be attended to before the ADP Approval Certificate can be issued.
- (c) The Authority may object to any Annual Delivery Plan on any of the following grounds (the "**ADP Grounds of Objection**"):
 - i) the Annual Delivery Plan has not been prepared in accordance with Good Industry Practice;

- ii) the performance of the Services in accordance with the proposed Annual Delivery Plan would:
 - A) be unlikely to comply with the requirements of this Contract;
 - B) be likely to have an adverse effect on the safety and/or security of any Young People, Personnel or the Staff; or
 - C) be likely to cause the Authority to incur additional expense; or
- iii) the Annual Delivery Plan would, if implemented, result in an inferior standard of performance of the relevant Services to the standard of performance required by the provisions of this Contract and the Authority's Requirements.
- (d) Following receipt of an ADP Notice of Non-Compliance, the Supplier shall attend to such outstanding matters referred to in the ADP Notice of Non-Compliance and shall deliver the revised Annual Delivery Plan to the Authority's Representative within ten (10) Working Days after receipt of the ADP Notice of Non-Compliance so that the procedure in clause F6.2 (a) i) (Approval of Annual Delivery Plan (first twelve months **following Service Commencement Date**)) is repeated as often as necessary to ensure that all outstanding matters in relation to the Annual Delivery Plan are attended to and the ADP Approval Certificate can be issued in accordance with clause F6.2 (a) i) (Approval of Annual Delivery Plan (first twelve months **following Service Commencement Date**)).

F6.3 Annual Delivery Plan (subsequent years)

- (a) Within twenty (20) Working Days after receipt of the Annual Delivery Plan (other than in respect of the first twelve months of service), the Authority's Representative may object to the Annual Delivery Plan, specifying the grounds of objection (provided that such grounds shall be one or more of the ADP Grounds of Objection) and specifying any outstanding matters that must be attended to.
- (b) Where the Authority objects to the Annual Delivery Plan pursuant to clause F6.3 (a) (Annual Delivery Plan (subsequent years)), the Supplier shall attend to such outstanding matters and shall deliver a revised Annual Delivery Plan to the Authority's Representative within ten (10) Working Days so that the procedure in clause F6.3 (a) (Annual Delivery Plan (subsequent years)) is repeated as often as necessary to ensure that all outstanding matters in relation to the Annual Delivery Plan are attended to.
- (c) In each twelve month period following the Services Commencement Date, for as long as there remain any outstanding matters pursuant to clauses F6.3 (a) (Annual Delivery Plan (subsequent years)) and F6.3 (b) (Annual Delivery Plan (subsequent years)), the Annual Delivery Plan from the preceding twelve month period shall continue to apply.

F6.4 Management and Monitoring of the Annual Delivery Plan

- (a) The Annual Delivery Plan shall be managed and monitored in accordance with Schedule 19 (Contract Management).

G. LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any breach of clauses D1, D2 or D4 or Schedules 6 (Information Assurance & Security) or 8 (Statutory Obligations and Corporate Social Responsibility)]; or
- (e) the indemnities set out at clauses C1.11 or E1.8(d);
- (f) any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.5, the Supplier indemnifies the Authority 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 Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Sites, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly by any act or omission of the Supplier.

G1.3 Subject to clause G1.1 the Supplier's liability in respect of Losses incurred in each Contract Year shall be limited to an amount which is the equivalent of the higher of:

- (a) the equivalent of 150% of the Price paid and payable in that Contract Year as though the Contract has been performed; and
- (b) £2,115,860.63.

G1.4 Subject to clause G1.1 the Authority's aggregate liability in respect of the Contract does not exceed the Price payable in the previous calendar year of the Contract.

G1.5 The Supplier is not responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

G1.6 The Authority may recover from the Supplier the following losses incurred by the Authority to the extent they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional costs of procuring a Replacement Supplier for the remainder of the Term and or replacement deliverables which shall include any incremental costs

associated with the Replacement Supplier and/or replacement deliverables above those which would have been payable under the Contract;

- (d) any compensation or interest paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

G1.7 Subject to clauses G1.1 and G1.6, neither Party is liable to the other for any:

- (a) loss of profits, turnover, business opportunities or damage to goodwill; or
- (b) indirect, special or consequential loss.

G1.8 The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in Schedule 20 (Insurance Requirements) and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.

G1.9 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent supplier in respect of risks insured in the United Kingdom insurance market from time to time.

G1.10 The Insurances shall be taken out and maintained with insurers who are of good financial standing, regulated by the applicable regulatory body and is in good standing with that regulator and of good repute in the United Kingdom insurance market.

G1.11 The Supplier shall ensure that the public and products liability policy contains an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

G1.12 Without limiting the other provisions of this Contract, the Supplier shall:

- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent supplier acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
- (b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- (c) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

G1.13 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

G1.14 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

- G1.15 The Supplier shall upon the date of the Contract and within fifteen (15) Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Contract.
- G1.16 The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances. Without prejudice to the Supplier's obligations such notification shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Contract.
- G1.17 The Supplier shall promptly notify its insurers of any matter arising from, or in relation to, the Services, the Inherited Assets, Authority Equipment or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of this Contract or the Services, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- G1.18 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of fifty thousand pounds (£50,000) relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- G1.19 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- G1.20 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

G2 Warranties and Representations

- G2.1 The Supplier warrants and represents on the Commencement Date and for the Term that:
- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Supplier;
 - (b) in entering the Contract it has not committed any fraud;
 - (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Supplier to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
 - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is 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 have an adverse effect on its ability to perform its obligations under the Contract;

- (e) 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;
- (f) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (g) it owns, or 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;
- (h) any person engaged by the Supplier shall be engaged on terms which do not entitle them to any Intellectual Property Right in any New IPR;
- (i) in the 3 years (or period of existence if the Supplier has not been in existence for 3 years) prior to the date of the Contract:
 - 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;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

G2.2 The Supplier confirms that in entering into the Contract it is not relying on any statements, warranties or representations given or made (whether negligently or innocently or whether express or implied), or any acts or omissions by or on behalf of the Authority in connection with the subject matter of the Contract except those expressly set out in the Contract and the Supplier hereby waives and releases the Authority in respect thereof absolutely.

G3 Tax Compliance

G3.1 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

- (a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- (b) promptly give the Authority:
 - 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 Authority may reasonably require.

G3.2 If the Supplier or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Supplier shall:

- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Staff.

H. DEFAULT, DISRUPTION AND TERMINATION

H1 Insolvency and Change of Control

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if an Insolvency Event occurs in respect of the Supplier [or the Guarantor]. In the event of a Financial Distress Event, the Parties shall comply with the provisions of Schedule 21 (Financial Difficulties).

H2 Default

H2.1 The Authority may terminate the Contract with immediate effect without any liability and without prejudice to its other rights by notice if the Supplier commits a Material Breach which:

- (a) the Supplier has not remedied to the satisfaction of the Authority within 20 Working Days (or such other period as may be specified by the Authority), after issue of a notice specifying the Material Breach and requesting it to be remedied;
- (b) in the opinion of the Authority, is not capable of remedy;
- (c) includes without limit:
 - i) where the Supplier accrues Service Points in six consecutive months; or
 - ii) where the Supplier accrues Service Points in seven months in any rolling nine month period.

H2.2 If, through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier is liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Authority fails to pay the Supplier undisputed sums of money when due, the Supplier shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such notice, the Supplier may terminate the Contract with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C2.1 or to a Force Majeure Event.

H3 Other Grounds

The Authority may terminate the Contract if:

H3.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;

- H3.2 the Supplier 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 its award of the Contract;
- H3.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU; or
- H3.4 the Supplier has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

H4 Termination on an Authority Break Point Date

The Authority may terminate the Contract on any of the Authority Break Point Dates by completing the following steps:

- H4.1 The Authority must give notice to the Supplier stating:
- (a) that the Authority is terminating the Contract under this clause H4 (Termination on an Authority Break Point Date); and
 - (b) that the Contract will terminate on the specified Authority Break Point Date; which must be a minimum of 90 days after the date of receipt by the Supplier of the notice.
- H4.2 Provided the notice has been provided in accordance with clause H4.1 above, the Contract will terminate on the specified Authority Break Point Date.

H5 Consequences of Expiry or Termination

- H5.1 If the Authority terminates the Contract under clause H2 and makes other arrangements for the supply of the Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term.
- H5.2 If the Contract is terminated under clause H2 the Authority shall make no further payments to the Supplier (for Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause H5H4.
- H5.3 If the Authority terminates the Contract under clause H4 the Authority shall make no further payments to the Supplier except for Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.
- H5.4 Save as otherwise expressly provided in the Contract:
- (a) 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 prejudices the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of the Contract does not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses [C1 (Payment and VAT), C2 (Recovery of Sums Due), D2 (Data Protection and Privacy), D3 (Official Secrets Acts

and Finance Act), D4 (Confidential Information), D5 (Freedom of Information), E1 (Intellectual Property Rights), F5 (Audit), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery), H8 (Retendering and Handover), H9 (Exit Management), , I6 (Remedies Cumulative), I12 (Governing Law and Jurisdiction) and paragraph 9 of Schedule 8 (Statutory Obligations & Corporate Social Responsibility)].

H6 Disruption

- H6.1 If the Supplier is unable to deliver the Services owing to disruption of the Authority's normal business (not including a planned full or partial Lockdown), the Supplier may request from the Authority a reasonable allowance of time to deliver the Services which would have otherwise been performed but not for the disruption.
- H6.2 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H6.3 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H6.4 If there is industrial action by Staff, the Supplier shall seek Approval for its proposals to continue to perform its obligations under the Contract.
- H6.5 If the Supplier's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, the Contract may be terminated with immediate effect by the Authority.

H7 Recovery

- H7.1 On termination of the Contract for any reason, the Supplier shall at its cost:
- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Goods and Services in a file format accessible on Microsoft Word, Microsoft Excel or Adobe Acrobat Reader;
 - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Supplier in good working order;
 - (c) immediately vacate any Authority Premises occupied by the Supplier;
 - (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress; and
 - (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Supplier to conduct due diligence.
- H7.2 If the Supplier does not comply with clauses H7.1 (a) and/or (b), the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents

to enter (for the purposes of such recovery) any Sites of the Supplier or its suppliers or Sub-Contractors where any such items may be held.

H8 Retendering and Handover

- H8.1 Within 21 days of being requested by the Authority, the Supplier shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services in a format capable of being used by the Authority.
- H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- H8.3 The Authority shall require that all potential providers 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 Authority; and that they shall not use it for any other purpose.
- H8.4 The Supplier indemnifies the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Supplier is required to provide under clause H8.1.
- H8.5 The Supplier shall allow access to its premises in the presence of an authorised representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.
- H8.6 If access is required to the Supplier's premises for the purposes of clause H8.5, the Authority shall give the Supplier at least seven (7) days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Supplier's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Supplier shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation includes 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.
- H8.8 Within 10 Working Days of being requested by the Authority, the Supplier shall transfer to the Authority, or any person designated by the Authority, 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 in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

H9 Exit Management

- H9.1 The Parties shall carry out their obligations set out in Schedule 15 (Exit Management).
- H9.2 On termination of the Contract the Supplier shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Supplier in accordance with the procedure set out in clauses H9.3 to H9.6.
- H9.3 If the Authority requires a continuation of all or any of the Services on expiry or termination of the Contract, either by performing them itself or by engaging a third party to perform them, the Supplier shall co-operate fully with the Authority 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.

- H9.4 The following commercial approach shall apply to the transfer of the Services if the Supplier:
- (a) 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 Price; or
 - (b) reasonably incurs additional costs, the Parties shall agree a Change to the Price based on the Supplier's rates either set out in Schedule 2 (Prices and Invoicing) or forming the basis for the Price.
- H9.5 When requested to do so by the Authority, the Supplier shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.
- H9.6 Within one Month of receiving the software licence information described in clause H9.5, the Authority shall notify the Supplier of the licences it wishes to be transferred and the Supplier shall provide for the approval of the Authority a plan for licence transfer.
- H9.7 The Supplier shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Supplier to the Authority on the completion or earlier termination of the Contract.

I. GENERAL

I1 Dispute Resolution

- I1.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Supplier and the commercial director of the Authority.
- I1.2 Nothing in this dispute resolution procedure prevents the Parties seeking, from any court of competent jurisdiction, an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I1.3 If the dispute cannot be resolved by the Parties pursuant to clause I1.1 either Party may refer it to mediation pursuant to the procedure set out in clause I1.5.
- I1.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- I1.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement of the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;

- (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 11.6.

11.6 Subject to clause 11.2, the Parties shall not institute court proceedings until the procedures set out in clauses 11.1 and 11.3 have been completed save that:

- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause 11.7;
- (b) if the Supplier intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority has 21 days following receipt of such notice to serve a reply on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause 11.7; and
- (c) the Supplier may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 11.7, to which the Authority may consent as it sees fit.

11.7 If any arbitration proceedings are commenced pursuant to clause 11.6:

- (a) the arbitration is governed by the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Supplier (the "**Arbitration Notice**") stating:
 - i) that the dispute is referred to arbitration; and
 - ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 11.7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator is binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 11.7 (a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

12 Force Majeure

- 12.1 Subject to this clause 12, a Party may claim relief under this clause 12 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 12.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Event notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 12.3 If the Supplier is the Affected Party, it is not entitled to claim relief under this clause 12 to the extent that consequences of the relevant Force Majeure Event:
 - (a) are capable of being mitigated by any of the Services, but the Supplier has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.
- 12.4 Subject to clause 12.3, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 12.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 12.6 If, as a result of a Force Majeure Event:
 - (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
 - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
 - ii) neither Party shall be liable for any Default arising as a result of such failure;

- (b) the Supplier fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.

12.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.

12.8 Relief from liability for the Affected Party under this clause 12 ends as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and is not dependent on the serving of a notice under clause 12.5.

13 Notices and Communications

13.1 Subject to clause 13.3, where the Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email.

13.2 If it is not returned as undelivered a notice served in:

- (a) a letter is deemed to have been received two (2) Working Days after the day it was sent; and
- (b) an email is deemed to have been received four (4) hours after the time it was sent provided it was sent on a Working Day

or when the other Party acknowledges receipt, whichever is the earlier.

13.3 Notices pursuant to clauses 12 (Force Majeure), 11 (Dispute Resolution) or 17 (Waiver) or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.

13.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

(a) For the Authority:

Contact Name: Peter Savage;

Address: Ministry of Justice, Post Point 8.22, 102 Petty France, London, SW1H 9AJ;

Email: peter.savage@justice.gov.uk

(b) For the Supplier:

Contact Name: Peter Cox

Address: LTE Group, Further Education Corporation, Openshaw Campus and Administrative Centre, Ashton Old Road, Openshaw, Manchester, M11 2WH; and

Email: pcox@novus.ac.uk

14 Conflicts of Interest

- 14.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the Contract. The Supplier will notify the Authority immediately giving full particulars of any such conflict of interest which may arise.
- 14.2 The Authority may terminate the Contract immediately by notice and/or take or require the Supplier to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the Contract. The actions of the Authority pursuant to this clause 0 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

15 Rights of Third Parties

- 15.1 Clauses B15.5 and E1.4 and paragraph 2.2 of Schedule 18 (Staff Transfer)] confer benefits on persons named in them (together "**Third Party Provisions**" and each person a "**Third Party Beneficiary**") other than the Parties and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**").
- 15.2 Subject to clause 15.1, a person who is not a Party has no right under the CRTPA to enforce 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.
- 15.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.
- 15.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

16 Remedies Cumulative

Except as expressly provided in 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 are not an election of such remedy to the exclusion of other remedies.

17 Waiver

- 17.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy do not constitute a waiver of that right or remedy and do not cause a diminution of the obligations established by the Contract.
- 17.2 No waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 13 (Notices and Communications).
- 17.3 A waiver of any right or remedy arising from a breach of the Contract does not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

18 Severability

If any part of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such part shall be

severed and the remainder of the Contract shall continue in full effect as if the Contract had been executed with the invalid, illegal or unenforceable part eliminated.

I9 Entire Agreement

The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

I10 Change in Law

I10.1 The Supplier is neither relieved of its obligations to supply the Services in accordance with the terms and conditions of the Contract nor entitled to an increase in the Price as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

I10.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause I10.1 (b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including whether any:
 - i) Change is required to the Services, the Price or the Contract; and
 - ii) relief from compliance with the Supplier's obligations is required; and
- (b) provide the Authority with evidence:
 - i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors; and
 - ii) as to how the Specific Change in Law has affected the cost of providing the Services.

I10.3 Any variation in the Price or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in clause I10.1 (b)) shall be implemented in accordance with clause F4.

I11 Counterparts

The Contract may be executed in counterparts, each of which when executed and delivered constitute an original but all counterparts together constitute one and the same instrument.

I12 Governing Law and Jurisdiction

Subject to clause I1 (Dispute Resolution) the Contract, including any matters arising out of or in connection with it, are governed by and interpreted in accordance with English Law and are subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction does not limit the right of the Authority to take proceedings against the Supplier in any other court of competent jurisdiction, and the taking of proceedings in any other court

of competent jurisdiction does not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

IN WITNESS of which the Contract is duly executed by the Parties on the date which appears at the head of page 1.

SIGNED for and on behalf of the
Secretary of State for Justice

Signature:

Name (block capitals):

Position:

Date:

SIGNED for and on behalf of LTE Group

Signature:

Name (block capitals):

Position:

Date: