

**This contract is made on 11 day of March 2019**

- 1 THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1 P 3 ("**DFE**"); and
- 2 The Frontline Organisation registered in England and Wales under number 09605966 whose registered office is Coram Campus, 41 Brunswick Square, WC1N 1AZR (the "Contractor")

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

**It is agreed that:**

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

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

**SIGNED by the CONTRACTOR acting by**

**Authorised Signatory**

**In the presence of**

**Witness signature**

**Occupation**

**Address**

**Date**

**SIGNED by DFE acting by**

**Position**

**in the presence of**

**Witness signature**

**Occupation**

**Address**

**Date**

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**Schedule 1**

**The Specification**

Please see Attachment 1: FTSW Contract Schedule 1 – The Specification **Redacted**

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## 1. DEFINITIONS AND INTERPRETATION

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

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

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

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

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

**“Commercially Sensitive Information”** means the information set out in schedule 9 comprising the information of a commercially sensitive nature relating to:

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

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

**“Confidential Information”** 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 and sensitive personal data within the meaning of the Data Protection Legislation (as defined in Schedule 8) provided that, Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure;
- (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.

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

**“Consortium Agreement”** means, if the Contractor is a Consortium, an agreement:

- (a) signed by all the Consortium Members as at the Effective Date; and
- (b) adhered to by Consortium Members who join the Consortium after the Effective Date by signing a Deed of Adherence

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

**“Consortium Member”** means a member of a Consortium (if any).

**"Contract Employers"** means the Contractor, any Sub-Contractor, the Consortium and/or any Consortium Member (as the case may be).

**“Contractor Equipment”** means the Contractor’s ICT equipment.

**“Contractor’s Solution”** means the Contractor’s proposal submitted in response to the DFE’s invitation to tender attached at schedule 10.

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

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

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

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

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

**“Default”** means breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Personnel in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

**“DFE Premises”** means any premises owned by, leased or hired to or otherwise controlled by DFE or which DFE nominates as such by notice in writing to the Contractor.

**“DFE Security Standards”** means the security standards as set out in schedule 8.

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

**"Dispute"** means any dispute between the Parties in connection with the Contract.

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

**“Effective Date”** means 11 March 2019.

**“Entry Transfer Date”** means each date on which the employment of any Transferring Former Supplier Employee transfers, or as applicable transferred, pursuant to TUPE to the relevant Contract Employer and, in respect of Personnel who did not transfer from the Former Supplier as a result of the commencement or provision of the Services, the first day on which they worked for the relevant Contract Employer in relation to the Services.

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

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

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

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

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

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

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

**Former Supplier:** a supplier supplying services to the DFE before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor).

**“General Anti-Abuse Rule”** means:

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

**“Good Industry Practice”** means the standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a

skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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

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

**“ICT”** means information and communications technology.

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

**“Initial Term”** means the period from the 11 March 2019 to 31 October 2023.

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

**“IP Materials”** shall have the meaning set out in clause 12.1.

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

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

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

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

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

**“NICs”** means National Insurance Contributions.

**“Occasion of Tax Non-Compliance”** means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or



- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

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

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

**“Prohibited Act”** means:

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

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

**“Regulations”** means the Public Contract Regulations 2015.

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

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

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

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

**Relevant Transfer:** a transfer of employment to which TUPE applies;

**“Replacement Contractor”** means any third party supplier appointed by the DFE to supply any services which are the same as or substantially similar to any of the Services in substitution for the Contractor following the expiry, termination or partial termination of the Contract or the cessation or partial cessation of the Services (as the case may be).

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

**“Restricted Country”** means:

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

**“Returning Employees”** means those persons agreed by the Parties to be employed by the Contractor (and/or any Contract Employer) wholly or mainly in the supply of the Services immediately before the end of the Term or the cessation or partial cessation of the Services (as the case may be).

**“Services”** means the services described in the Specification.

**“Services Commencement Date”** means 11 March 2019.

**“Service Credits”** means the service credits specified in schedule 4 which shall be deducted from the Charges in the event that the Key Performance Indicators are not met in respect of Services.

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

**“Service Period”** means the following:

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

**“Service Users”** means those receiving the Services.

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

**“SME MI Reporting Template”** means the departmental contract SME data collection template found [here](#) which may be amended from time to time in accordance with clause 21.9.

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

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

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

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

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

**Transferring Former Supplier Employees:** in relation to a Former Supplier, those employees of the Former Supplier and any other body wholly or mainly engaged in the provision of services that are the same as or substantially similar to the Services (or any part of the Services) immediately before the Entry Transfer Date.

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

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced or any other regulations implementing the Acquired Rights Directive.

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

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

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

1.2.1 references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract which are in force prior to the date of the Contract;

1.2.2 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;

1.2.3 the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context;

1.2.4 the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;

1.2.5 any reference in the Contract to a clause or schedule is a reference to a clause or schedule of the Contract and references in any schedule to paragraphs relate to the paragraphs in that schedule;

- 1.2.6 the clause headings are included for convenience only and shall not affect the interpretation of the Contract; and
- 1.2.7 the schedules and appendices form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules.

## **2. TERM**

- 2.1 The Contract commences on the 11 March 2019 and, subject to any provision of this Contract for earlier termination, or extension set out in this clause 2, will terminate at the end of the Initial Term (11 March 2019 to 31 October 2023).
- 2.2 DFE may extend the Initial Term (11 March 2019 to 31 October 2023) by up to 24 months (two additional cohorts) in 12 month blocks, by giving not less than 15 months' written notice to the Contractor prior to the expiry of the Initial Term (11 March 2019 to 31 October 2023).

## **3. THE SERVICES**

- 3.1 The Contractor shall provide the Services in accordance with the Specification and undertake and be responsible for all obligations of the Contractor in respect of the Services.
- 3.2 The DFE may itself provide or appoint other third parties to provide the Services (or services equivalent to the Services) at any time.
- 3.3 The Contractor shall, in performing its obligations under the Contract:
  - 3.3.1 conform to the requirements of the Specification and the Contractor's Solution or as otherwise agreed in writing between the Parties;
  - 3.3.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the DFE specified by the DFE from time to time;
  - 3.3.3 comply with Good Industry Practice;
  - 3.3.4 ensure that the Services are provided by competent and appropriately trained personnel;
  - 3.3.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
  - 3.3.6 comply with the KPIs, Service Levels and Service Credit requirements set out in schedule 4;
  - 3.3.7 comply with the Implementation Plan;
  - 3.3.8 in so far as is reasonably practicable, comply with any policies and procedures adopted by the DFE from time to time within 14 days of the same being brought to the attention of the Contractor by the DFE;
  - 3.3.9 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
  - 3.3.10 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of the DFE, the Service Users and all other persons including members of the public; and

- 3.3.11 comply with all safety, security, acceptable use and other policies of the DFE from time to time notified to it and procure that the Personnel also comply.
- 3.4 The DFE may provide data and materials to the Contractor and access to systems for the purposes of providing the Services that the Contractor may use but only to the extent necessary to enable the Contractor to provide the Services.
- 3.5 All equipment and other property brought onto DFE Premises shall be at the Contractor's own risk and the DFE shall have no liability for any loss of or damage to any such equipment and property unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence of the DFE.
- 3.6 Any land or DFE Premises made available from time to time to the Contractor by the DFE in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or DFE Premises as a licensee and shall vacate the same on completion, termination or abandonment of the Contract or the task in respect of which such land or DFE Premises was made available.
- 3.7 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or any of the Personnel and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the DFE retains the right at any time to use any DFE Premises in any manner.

#### **4. CONSORTIA**

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

#### **5. TRANSFER AND SUB-CONTRACTING**

- 5.1 Save as set out in this clause 5 the Contractor may not sub-contract, assign, transfer, charge the benefit and/or delegate the burden of the whole or any part of the Contract (a "**Transfer**") without the prior written consent of the DFE.
- 5.2 If the DFE consents to a Transfer the Contractor will evidence the Transfer in writing and provide a copy of the Transfer document on request.
- 5.3 The Contractor may award Sub-Contracts with a value per annum not exceeding £10,000 without the DFE's consent, provided that, prior to any sub-contracting of its obligations, the Contractor notifies the DFE of the identity of the Sub-Contractor.
- 5.4 Where the DFE has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of the DFE, be sent by the Contractor to the DFE as soon as reasonably practicable.

- 5.5 The Contractor shall:
- 5.5.1 subject to clause 5.7, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with this Contract above a minimum threshold of £25,000 that arise during the Term;
  - 5.5.2 within 90 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
  - 5.5.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
  - 5.5.4 provide reports on the information at clause 5.5.3 to the Authority in the format and frequency as reasonably specified by the Authority; and
  - 5.5.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 5.6 Each advert referred to at clause 5.5.1 shall provide a fully and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.
- 5.7 The obligation at clause 5.5.1 shall only apply in respect of Sub-Contract opportunities arising after the contract award date.
- 5.8 Notwithstanding clause 5.5, the Authority may by giving its prior written approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.
- 5.9 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the DFE's prior written consent.
- 5.10 The DFE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the DFE's right of termination pursuant to clause 23 unless the Sub-Contractor can remedy the breach to the DFE's satisfaction within 21 days of receipt by the Contractor of written notice from the DFE requiring the Sub-Contract to be terminated.
- 5.11 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 5.12 If the DFE believes there are:
- 5.12.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
  - 5.12.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the DFE may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.
- 6. PERSONNEL**
- 6.1 The DFE may refuse admission to DFE Premises and/or direct the Contractor to end the involvement in the Services of any Personnel whom the DFE believes is a security risk.

- 6.2 If the DFE require the removal of any Personnel pursuant to clause 6.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor's cost.
- 6.3 The Contractor shall use its reasonable endeavours to ensure continuity of Personnel and to ensure that the turnover rate of Personnel is at least as good as the prevailing industry norm for similar services, locations and environments.
- 6.4 The Contractor shall ensure that no person who discloses a Relevant Conviction or who is found to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service Procedures or otherwise), is employed or engaged in providing the Services without the DFE's prior written consent.
- 6.5 For each of the Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the DFE owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the Contractor shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.
- 6.6 The Contractor acknowledges that Key Personnel and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Personnel and Key Sub-Contractors listed in schedule 7 as at the Effective Date.
- 6.7 Key Personnel shall not be released from supplying the Services without the DFE's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 6.8 Any replacements of Key Personnel shall be subject to DFE consent and shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.9 The DFE shall not unreasonably withhold consent under clauses 6.7 or 6.8. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Personnel or Key Sub-Contractors.
- 6.10 DFE may require the Contractor to remove any Key Personnel who the DFE considers in any respect unsatisfactory.
- 6.11 The DFE shall not be liable for the cost of replacing any Key Personnel and the Contractor shall indemnify the DFE against all Employment Liabilities that may arise in this respect.
- 6.12 Except in respect of any transfer of staff under TUPE, for the Term and for 12 months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any staff of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at staff of the other Party.

## **7. EMPLOYMENT**

### **7.1 COMMENCEMENT PROVISIONS**

- 7.1.1 The DFE and the Contractor acknowledge and agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services may be a Relevant Transfer in relation to the Transferring Former Supplier Employees;
- (b) in the event that there is a Relevant Transfer, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of TUPE) shall have effect on and from the Entry Transfer Date as if originally made between the relevant Contract Employer and each such Transferring Former Supplier Employee and the Contractor shall and shall procure that each of the Contract Employers shall continue to employ the Transferring Former Supplier Employees on the basis that the contracts of employment of the Transferring Former Supplier Employees shall have effect from the relevant Entry Transfer Date as if they had been originally entered into between the applicable Contract Employer and the Transferring Former Supplier Employees (except insofar as such contracts relate to the provision of an occupational pension scheme as is referred to in regulation 10 of TUPE); and
- (c) for this purpose, the Contractor shall and shall procure that the relevant Contract Employer shall cooperate with the Former Supplier with a view to ensuring the ordered transition of the services or the relevant part thereof and agreeing the applicable Entry Transfer Date for each Transferring Former Supplier Employee.

7.1.2 Subject to clause 7.1.3 the Contractor shall indemnify the DFE and/or the Former Supplier against any Employment Liabilities in respect of any Transferring Former Supplier Employee and any of the Personnel (or in each case, where applicable any employee representative as defined in TUPE) arising from or as a result of:

- (a) any breach by the Contractor or any of the Contract Employers of the obligations set out in clause 7.1.1;
- (b) any claim by or in respect of any Transferring Former Supplier Employee and/or any Personnel arising from his employment/engagement by the Contractor or any of the Contract Employers or the termination of that employment/engagement (howsoever arising) on or after the relevant Entry Transfer Date;
- (c) any act or omission by the Contractor or any Contract Employer whether occurring before, on or after the Entry Transfer Date;
- (d) the breach or non-observance by the Contractor or any Contract Employer on or after the Entry Transfer Date of any collective agreement and/or any custom or practice which the Contractor or any Contract Employer is contractually bound to honour;
- (e) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees or Personnel arising from or connected with any failure by the Contractor or any Contract Employer to comply with any legal obligation to such trade union, body or person arising on or after the Entry Transfer Date;
- (f) any proposal by the Contractor or any Contract Employer prior to the Entry Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after



their transfer to the Contractor or a Sub-contractor (as the case may be) on the Entry Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Entry Transfer Date as a result of or for a reason connected to such proposed changes;

- (g) the clause in the identity of the employer to the relevant Contract Employer by virtue of TUPE being so significant and detrimental to any Transferring Former Supplier Employee, or to anyone who would have been a Transferring Former Supplier Employee but for their resignation or decision to treat their employment as terminated under regulation 4(9) of TUPE on or before the relevant Entry Transfer Date;
- (h) any statement communicated to or action undertaken by the Contractor or Relevant Employer to, or in respect of, any Transferring Former Supplier Employee before the Entry Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the DFE and/or the Former Supplier in writing;
- (i) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Entry Transfer Date;
- (j) a failure of the Contractor or any Contract Employer to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees and/or the Personnel in respect of the period from (and including) the Entry Transfer Date; and
- (k) any claim made by or in respect of a Transferring Former Supplier Employee or Personnel or any appropriate employee representative (as defined in TUPE) of any Transferring Former Supplier Employee or Personnel relating to any act or omission of the Contractor or any Contract Employer in relation to obligations under regulation 13 of TUPE, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of TUPE.

7.1.3 The indemnities in clause 7.1.2 shall not apply to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employment Liabilities arising from the Former Supplier's failure to comply with its obligations under TUPE.

7.1.4 The Contractor shall comply, and shall procure that each of the Contract Employers shall comply, with all its obligations under TUPE (including without limitation its obligation to inform and consult in accordance with regulation 13 of TUPE) and shall perform and discharge, and shall procure that each of the Contract Employers shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees and the Personnel, on and from the Entry Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all

wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Entry Transfer Date) up to and including the end of the Term or, if earlier, the date on which such employee transfers pursuant to TUPE to the Replacement Contractor.

## 7.2 INFORMATION

7.2.1 The Contractor shall, and shall procure that each of the Contract Employers shall, promptly provide to the DFE and/or at the DFE's direction, the Former Supplier, in writing such information as is necessary to enable the DFE and/or the Former Supplier to carry out their respective duties under regulation 13 of TUPE.

7.2.2 The Contractor agrees that within 30 days of receipt of a written request of the DFE at any time (provided that the DFE shall only be entitled to make one such request in any six month period), and in any event no later than 6 Months prior to the end of the Term the Contractor shall fully and accurately disclose to the DFE all information that the DFE may reasonably request in relation to the Staff including the following:

- (a) the total number of Staff;
- (b) the age, gender, employment status, salary and other remuneration (contractual and non-contractual), future pay settlements, redundancy, pensions entitlement and any benefits (contractual and non-contractual) of each of the Staff referred to at clause 7.2.2(a) above;
- (c) the terms and conditions of employment/engagement of each of the Staff referred to at clause 7.2.2(a) above (including, in the case of employees, all particulars required to be provided by the Employment Rights Act 1996), job titles, functions (including the percentage of time spent by each individual engaged in providing the services; and a description of the nature of the work undertaken by each individual by location) and qualifications;
- (d) details of any disciplinary or grievance proceedings relating to the Staff in the last two years and circumstances likely to give rise to such proceedings;
- (e) details of any claims brought by any of the Staff and any potential legal action where the Contractor has reasonable grounds to believe such action might occur (including threatened claims) and any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); and
- (f) details of any collective and recognition agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

(together the **"TUPE Information"**).

7.2.3 At intervals determined by the DFE (which shall not be more frequent than once every 30 days) the Contractor shall give the DFE updated TUPE Information.

7.2.4 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Contractor.

7.2.5 The DFE may use TUPE Information for the purposes of any retendering process.

### 7.3 EXIT PROVISIONS

7.3.1 If TUPE applies to the transfer of the Services on expiry, cessation or termination (or partial expiry, cessation or termination) of the Contract or of the Services, the Contractor shall indemnify and keep indemnified the DFE, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:

- (a) the provision of TUPE Information;
- (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any of the Contract Employers in respect of any Returning Employee during or upon the end of the Term;
- (c) any failure by the Contractor or any of the Contract Employers to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save to the extent that such failure arises from the failure of the DFE or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
- (d) any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any of the Contract Employers to comply with any legal obligation to such trade union, body or person; and
- (e) any claim by any person who is transferred by the Contractor to the DFE and/or a Replacement Contractor whose name is not included in the list of Returning Employees.

7.3.2 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the DFE and provide the DFE with up to date TUPE Information.

7.3.3 The Contractor undertakes to the DFE that, during the 12 months prior to the end of the Term the Contractor shall not (and shall procure that each of the Contract Employers shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):

- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
- (b) terminate or give notice to terminate the employment or

engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);

- (c) transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
- (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

#### 7.4 GENERAL

- 7.4.1 Where a provision in this clause 7 imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of the Contract Employers shall comply with such obligation and provide such indemnity, undertaking or warranty to the DFE, Former Supplier or Replacement Sub-contractor, as the case may be.
- 7.4.2 This clause 7 applies during the Term and indefinitely thereafter.
- 7.4.3 It is recognised that it is possible that in future TUPE may be repealed or amended (whether in consequence of the United Kingdom leaving the European Union or otherwise). Accordingly it is agreed that any reference in this clause 7 (or any defined term used in this clause 7) to TUPE, or to any individual provisions of TUPE, shall be deemed to include any legislation or other laws which may be applicable or alleged to be applicable from time to time in any part of the United Kingdom and/or any foreign jurisdiction in respect of any individual who is or was employed in the Services or any part thereof, where such legislation or laws are equivalent to or in any way similar to TUPE (or the relevant individual provisions of TUPE), where such applicable legislation or other laws apply, or are alleged to apply by the relevant individual or his representative, to the transfer of his employment or engagement or Employment Liabilities in connection with his employment or engagement or its termination, including but not limited to Council Directive 2001/23/EC (the Directive) and/or any foreign legislation or other laws implemented pursuant to the Directive.

#### 8. CHARGES

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 8.2 In consideration for the provision of the Services the DFE shall pay the Charges in accordance with schedule 3 subject to the receipt of correct invoices pursuant to clause 8.7 being issued by the Contractor.
- 8.3 Except where otherwise expressly stated in schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Term.
- 8.4 The Charges are exclusive of Value Added Tax ("VAT") and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever

nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the DFE of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.

- 8.5 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.
- 8.6 The DFE may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 8.7 Invoices shall be submitted to [apinvoices-dfe-u@sscl.gse.gov.uk](mailto:apinvoices-dfe-u@sscl.gse.gov.uk) and/or sent, within 30 days of the end of the relevant invoicing date, to SSCL Accounts Payable Team, Room 6124, Tomlinson House, Norcross, Blackpool, FY5 3TA. An invoice is a **“Valid Invoice”** if it is legible, has been submitted within the relevant time period to the correct address and includes:
- 8.7.1 the date of the invoice;
  - 8.7.2 Contractor’s full name and address;
  - 8.7.3 Contractor's bank details;
  - 8.7.4 Contract reference number and purchase order number;
  - 8.7.5 the charging period;
  - 8.7.6 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
  - 8.7.7 days and times worked (if applicable);
  - 8.7.8 Service Credits (if applicable); and
  - 8.7.9 VAT if applicable.
- 8.8 The DFE shall not pay an invoice which is not a Valid Invoice.
- 8.9 The DFE intends to pay Valid Invoices within 10 days of receipt. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause 8.9 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 8.10 The DFE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.11 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the DFE. The final invoice shall be submitted not later than 30 days after the end of the Term.

- 8.12 The DFE shall not be obliged to pay the final invoice until the Contractor has carried out all of the Service.
- 8.13 The Contractor shall ensure that a term is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- 8.14 If the DFE disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within 10 Business Days notify the Contractor of the reasons for disputing the invoice. The DFE may withhold the disputed amount pending resolution of the dispute.
- 8.15 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 36.

## **9. TAX and VAT**

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

to any payments made to the Contractor under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract. The Contractor shall indemnify DFE against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the Contractor of its obligations under the Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by DFE in connection with any such assessment or claim.

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

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

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

9.11.2 promptly give the DFE:

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

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

## **10. PREVENTION OF CORRUPTION**

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

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

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

10.2 The Contractor shall not:

10.2.1 commit a Prohibited Act; or

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

10.3 The Contractor shall:

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

10.3.2 keep appropriate records of its compliance with its obligations under clause 10.3.1 and make such records available to the DFE on request.

- 10.4 The Contractor shall immediately notify the DFE in writing if it becomes aware of any breach of clauses 10.1 and/or 10.2, or has reason to believe that it has or any of the Personnel have:
- 10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 10.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or
  - 10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 10.5 If the Contractor notifies the DFE pursuant to clause 10.4, the Contractor shall respond promptly to the DFE's enquiries, co-operate with any investigation, and allow the DFE to audit any books, records and any other relevant documentation.
- 10.6 If the Contractor is in Default under clauses 10.1 and/or 10.2, the DFE may by notice:
- 10.6.1 require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
  - 10.6.2 immediately terminate the Contract.
- 10.7 Any notice served by the DFE under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the party who the DFE believes has committed the Prohibited Act and the action that the DFE has taken (including, where relevant, the date on which the Contract shall terminate).

## **11. DISCRIMINATION**

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

## **12. INTELLECTUAL PROPERTY**

- 12.1 All Intellectual Property Rights in materials:
- 12.1.1 furnished to or made available to the Contractor by or on behalf of the DFE (the "**DFE IP Materials**") shall remain the property of the DFE (save for



Copyright and Database Rights which shall remain the property of the Crown); and

12.1.2 prepared by or for the Contractor on behalf of the DFE in connection with the Contract (the "**Service Specific IP Materials**") shall vest in the DFE (save for Copyright and Database Rights which shall vest in the Crown)

(together the "**IP Materials**").

12.2 The Contractor shall not, and shall ensure that Personnel shall not, use or disclose IP Materials without the DFE's approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.

12.3 The Contractor hereby assigns to the DFE or undertakes to procure the assignment to the DFE of all Intellectual Property Rights which may subsist in the Service Specific IP Materials (save for Copyright and Database Rights which it hereby assigns to the Crown or undertakes to procure the assignment of to the Crown). These assignments shall be given with full title guarantee, shall take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service Specific IP Materials and shall include, without limitation, an assignment to the DFE (or the Crown as appropriate) of all rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Contractor shall execute all documents and do all other acts requested by the DFE and necessary to execute and perfect these assignments and to otherwise evidence the DFE's or the Crown's ownership of such rights.

12.4 The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright produced by or in connection with the Contract or the performance of the Contract.

12.5 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the DFE a non-exclusive licence or, if itself a licensee of those rights, shall grant to the DFE an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the DFE to sub-licence, transfer, novate or assign to a Replacement Contractor. The Contractor shall notify the DFE of any third party Intellectual Property Rights to be used in connection with the Contract prior to their use in connection with the Contract or the creation or development of the Service Specific IP Materials.

12.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Contractor shall indemnify and keep indemnified the DFE and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the DFE may suffer or incur as a result of or in connection with any breach of this clause 12, except to the extent that any such claim arises from:

12.6.1 items or materials supplied by the DFE; or

12.6.2 the use of data supplied by the DFE which is not required to be verified by the Contractor under any provision of the Contract.

12.7 The DFE shall notify the Contractor in writing of any claim or demand brought against the DFE for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor.

12.8 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in

materials supplied and/or licensed by the Contractor to the DFE, provided always that the Contractor shall:

- 12.8.1 consult the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 12.8.2 take due and proper account of the interests and concerns of the DFE; and
  - 12.8.3 not settle or compromise any claim without the DFE's prior written consent (not to be unreasonably withheld or delayed).
- 12.9 Notwithstanding clause 12.8. the DFE may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the DFE takes action the Contractor shall at the request of the DFE afford to the Contractor all reasonable assistance to the DFE for the purpose of contesting such claim.
- 12.10 The DFE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the DFE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract subject to the Contractor indemnifying the DFE on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- 12.11 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the DFE and, at its own expense and subject to the consent of the DFE (not to be unreasonably withheld or delayed), use reasonable endeavours to:
- 12.11.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 12 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or
  - 12.11.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and Services, which are the subject of the alleged infringement, on terms which are acceptable to the DFE.
- 12.12 If the Contractor is unable to comply with clauses 12.11.1 and 12.11.2 within 20 Business Days of receipt of the Contractor's notification the DFE may terminate the Contract with immediate effect by notice in writing.
- 12.13 The Contractor grants to the DFE a royalty-free and non-exclusive licence during the Term (with a right to sub-licence) to use any Intellectual Property Rights (excluding the Contractor Trade Marks) that the Contractor owned or developed prior to the Effective Date or otherwise not in connection with the Contract ("**Contractor IP**") and which the DFE reasonably requires in order to exercise its rights under, and take the benefit of, the Contract including the Services provided and the use and further development of the IP Materials.
- 12.14 The Contractor IP and Contractor Trade Marks shall remain the property of the Contractor.
- 12.15 The DFE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.

- 12.16 If the Contractor is not able to grant to the DFE a licence to use any Contractor IP for any reason, including due to any Intellectual Property Rights that a third party may have in such Contractor IP, the Contractor shall use its reasonable endeavours to:
- 12.16.1 procure that the third party owner of any Intellectual Property Rights that are or that may be used to perform the Contract grants to the DFE a licence on the terms set out in clause 12.13; or
  - 12.16.2 if the Contractor is itself a licensee of those rights and is able to do so under the terms of its licence, grant to the DFE a sub-licence on the terms set out in clause 12.13.
- 12.17 The DFE grants to the Contractor:
- 12.17.1 a licence in the terms of the Open Government Licence (<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>) to use the Copyright and Database Rights in the IP Materials; and
  - 12.17.2 a royalty free, non-exclusive, non-transferable licence during the Term to use the Intellectual Property Rights (except for Copyright and Database Rights) in the IP Materials to the extent necessary for the performance by the Contractor of its obligations under the Contract.
- 12.18 The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are or are to be the DFE IP Materials any act or thing which:
- 12.18.1 would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry; or
  - 12.18.2 would or might prejudice the right or title of the DFE to any of the DFE IP Materials.
- 12.19 The Contractor shall comply with the DFE's branding guidelines and shall not use any other branding, including its own, other than as set out in the DFE's branding guidelines or as otherwise agreed with the DFE.
- 12.20 When using DFE Trade Marks the Contractor shall observe all reasonable directions given by the DFE from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:
- 12.20.1 adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any DFE Trade Mark, or unfairly competes with any DFE Trade Mark; or
  - 12.20.2 apply anywhere in the world to register any trade marks identical to or so nearly resembling any DFE Trade Mark as to be likely to deceive or cause confusion.

### **13. DATA, SYSTEMS HANDLING AND SECURITY**

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

### **14. PUBLICITY AND PROMOTION**

- 14.1 Subject to clause 15.2, without prejudice to the DFE's obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- 14.2 The Contractor shall use reasonable endeavours to ensure its Personnel comply with clause 14.1.
- 14.3 Without prejudice to the generality of clauses 12.19 and 14.1, the Contractor shall not itself, and shall procure that Consortium Members shall not, use the DFE's name, brand or DFE Trade Marks or the Personal Data of the DFE to sell, promote, market or publicise the Contractor's other programmes, courses, services or other activities.
- 14.4 Subject to clauses 12 and 15 DFE may disclose, copy and otherwise distribute to the public, including but not limited to, by way of the Open Government Licence, any information arising out of the Services or comprised in any work relating to the Services.

## **15. CONFIDENTIALITY**

- 15.1 Except to the extent set out in this clause 15 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- 15.2 The Contractor hereby gives its consent for the DFE to publish the whole Contract including from time to time agreed changes to the Contract.
- 15.3 The Contractor may only disclose the DFE's Confidential Information to Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that Personnel are aware of and shall comply with these obligations as to confidentiality.
- 15.4 The Contractor shall not, and shall procure that Personnel do not, use any of the DFE's Confidential Information received otherwise than for the purposes of the Contract.
- 15.5 Clause 15.1 shall not apply to the extent that:
- 15.5.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
  - 15.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 15.5.3 such information was obtained from a third party without obligation of confidentiality;
  - 15.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 15.5.5 it is independently developed without access to the other Party's Confidential Information.
- 15.6 Nothing in clause 15 shall prevent the DFE disclosing any Confidential Information obtained from the Contractor:

- 15.6.1 for the purpose of the examination and certification of the DFE's accounts;
  - 15.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DFE has used its resources;
  - 15.6.3 to the extent that the DFE (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - 15.6.4 to any other crown body and the Contractor hereby acknowledges that all government departments receiving such Confidential Information may further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or
  - 15.6.5 to any consultant, contractor or other person engaged by the DFE provided that in disclosing information under clauses 15.6.3 and 15.6.4 the DFE discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 15.7 Nothing in clauses 15.1 to 15.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- 15.8 The DFE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the DFE's Confidential Information is disclosed pursuant to clause 15.6 is made aware of the DFE's obligations of confidentiality.
- 15.9 If the Contractor does not comply with clauses 15.1 to 15.5 the DFE may terminate the Contract immediately on notice to the Contractor.

## **16. FREEDOM OF INFORMATION**

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

## **17. OFFICIAL SECRETS ACTS AND FINANCE ACT**

- 17.1 The Contractor shall comply with the provisions of:

17.1.1 the Official Secrets Acts 1911 to 1989; and

17.1.2 section 182 of the Finance Act 1989.

## **18. LIABILITY**

18.1 Neither Party excludes or limits its liability (if any) to the other:

18.1.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;

18.1.2 for personal injury or death resulting from the its negligence;

18.1.3 under section 2(3) Consumer Protection Act 1987;

18.1.4 any breach of clause 15 or schedule 8;

18.1.5 for its own fraud; or

18.1.6 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.

18.2 Subject to clauses 18.1 and 18.4, the Contractor shall indemnify the DFE and keep the DFE indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor or any Personnel on the Premises, including in respect of death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

18.3 The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses 12 (Intellectual Property) and 9 (Tax).

18.4 Subject to clauses 18.1, 18.3 and 18.6, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:

18.4.1 for any losses of an indirect or consequential nature;

18.4.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or

18.4.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.

18.5 Subject to clauses 18.1, 18.3 and 18.4, the maximum liability of either Party to the other under the Contract, whether in contract, tort (including negligence) or otherwise:

18.5.1 in respect of damage to property is limited to £5 million in respect of any one incident or series of connected incidents; and

18.5.2 in respect of any claim not covered by clause 18.5.1, is limited in each calendar year in aggregate to 250% of the sum of the Charges payable in that year.

18.6 The DFE may recover from the Contractor the following losses incurred by the DFE to the extent they arise as a result of a Default by the Contractor:

- 18.6.1 any additional operational and/or administrative costs and expenses incurred by the DFE, including costs relating to time spent by or on behalf of the DFE in dealing with the consequences of the default;
  - 18.6.2 any wasted expenditure or charges;
  - 18.6.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
  - 18.6.4 any compensation or interest paid to a third party by the DFE; and
  - 18.6.5 any fine or penalty incurred by the DFE and any costs incurred by the DFE in defending any proceedings which result in such a fine or penalty.
- 18.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 18.8 All property of the Contractor whilst on the DFE's premises shall be there at the risk of the Contractor and the DFE shall accept no liability for any loss or damage howsoever occurring to it.
- 18.9 The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £5,000,000 for any one claim, for professional indemnity insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £1,000,000 for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.
- 18.10 The Contractor shall supply to the DFE on demand copies of the insurance policies maintained under clause 18.9.
- 18.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 18.12 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.

## **19. WARRANTIES AND REPRESENTATIONS**

- 19.1 The Contractor warrants and represents that:
- 19.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
  - 19.1.2 in entering the Contract it has not committed any fraud;
  - 19.1.3 as at the Effective Date, all information contained in the Contractor's Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the DFE prior to execution of the Contract;
  - 19.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and

belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;

- 19.1.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 19.1.6 the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party's work or materials provided that this clause 19.1.6 shall not apply to any IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and
- 19.1.7 the use by the DFE of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;
- 19.1.8 in the 3 years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 19.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- 19.1.10 it has notified the DFE in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

## **20. FORCE MAJEURE**

- 20.1 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 20.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 20.2 If either Party is prevented from performance of its obligations for a continuous period in excess of 3 months, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.



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

## **21. MONITORING AND REMEDIATION**

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

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

21.3 If the DFE reasonably considers that any provision of the Contract is at risk of not being complied with and/or the Contractor fails to meet any of the Performance Standards in any two consecutive months, it may, notwithstanding and without prejudice to any other right or remedy that it may have under the Contract or otherwise:

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

21.3.2 monitor, supervise, direct and/or guide the Contractor's provision of the Services until the DFE reasonably considers that any such risk has been remedied or removed. The Contractor shall cooperate at all times with the DFE in this regard.

21.4 If the Contractor fails to comply with any provision of the Contract or fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the DFE may instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 21 days or such other period of time as the DFE may direct.

21.5 Without prejudice to any other right or remedy the DFE may have under the Contract or otherwise, in the event that:

21.5.1 the Contractor fails to achieve any of the Performance Standards in the month following the month in which the remediation plan is approved under clause 21.3.1; and/or

21.5.2 the Contractor fails to meet any of the Performance Standards in any three consecutive months,

the DFE may terminate this Contract on 10 Business Days' notice to the Contractor and without paying compensation to the Contractor.

21.6 The DFE may review from time to time the progress of the Contractor against the Implementation Plan. The Contractor shall cooperate with the DFE in this regard and provide any information and evidence reasonably required by the DFE.

21.7 The DFE may instruct the Contractor to take appropriate remedial action where the DFE reasonably considers that the Implementation Plan is not being complied with

or is at risk of not being complied with and the Contractor shall take such remedial action.

21.8 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information (MI) reports to the DFE which incorporate the data described in the SME MI Reporting Template which is:

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

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

21.8.3 the total value of sub-contracted revenues to SMEs and BCSEs.

21.9 The SME management information reports shall be provided in the correct format as required by the SME MI Reporting Template and any guidance issued by the DFE from time to time. The DFE may change the SME MI Reporting Template from time to time (including the data required and/or format) by issuing a replacement version. The DFE shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

21.10 The Supplier further agrees and acknowledges that it may not make any amendment to the then current SME MI Reporting Template without the prior written approval of the DFE.

## **22. STEP IN RIGHTS**

22.1 Without prejudice to DFE's rights of termination under clause 23 the DFE may exercise one or more of the rights set out in this clause 22 ("**Step In Rights**") if:

22.1.1 there is a Default by the Contractor which materially prevents or materially delays performance of the Services or any part of the Services;

22.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;

22.1.3 a Regulatory Body has advised the DFE that exercise by the DFE of its rights under this clause 22 is necessary;

22.1.4 a serious risk exists to the health and safety of persons, property or the environment;

22.1.5 it is necessary to discharge a statutory duty; or

22.1.6 the Contractor becomes insolvent.

22.2 If the DFE has a Step In Right it may serve notice on the Supplier (a "**Step-In Notice**") that it will take action under this clause 22 either itself or with the assistance of a third party.

22.3 The Step-In Notice shall set out:

22.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the "**Required Action**");

22.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor's Default;

22.3.3 the date on which it wishes to commence the Required Action;

- 22.3.4 the time period which it believes will be necessary for the Required Action;
  - 22.3.5 whether the DFE will require access to the Contractor's premises; and
  - 22.3.6 to the extent practicable, the effect the DFE anticipates the Required Action will have on the Contractor's obligations to provide the Services during the period that the Required Action is being taken.
- 22.4 Following service of a Step-In Notice, the DFE shall:
- 22.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
  - 22.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;
  - 22.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the DFE is not assuming control; and
  - 22.4.4 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.
- 22.5 For as long as and to the extent that the Required Action continues:
- 22.5.1 the Contractor shall not be obliged to provide the Services to the extent that
  - 22.5.2 they are the subject of the Required Action; and
  - 22.5.3 the DFE shall pay the Contractor the Charges after subtracting any applicable Service Credits and the DFE's costs of taking the Required Action.
- 22.6 If the Contractor demonstrates to the DFE's reasonable satisfaction that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the DFE not taken the Required Action, the DFE may adjust the Charges.
- 22.7 Before ceasing to exercise its Step In Rights the DFE shall deliver a written notice to the Contractor (a "**Step-Out Notice**"), specifying:
- 22.7.1 the Required Action it has taken; and
  - 22.7.2 the date on which the DFE plans to end the Required Action subject to the DFE being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 22.8.
- 22.8 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the date specified in clause 22.7.2, develop for the DFE's approval a draft plan relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of the Contract.
- 22.9 If the DFE does not approve the draft plan, it shall inform the Contractor of its reasons for not approving it and the Contractor shall then revise the draft plan taking those reasons into account and shall re-submit the revised plan to the DFE for approval. The DFE shall not withhold or delay its approval of the draft plan unreasonably.

- 22.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 22, provided that the DFE shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-In action taken by the DFE under clauses 22.1.2 to 22.1.5 (insofar as the primary cause of the DFE serving the Step In Notice is identified as not being the result of a Contractor's Default).

### **23. TERMINATION**

- 23.1 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a company and in respect of the Contractor:

23.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

23.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

23.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;

23.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

23.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

23.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

23.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

23.1.8 any event similar to those listed in clauses 23.1.1 to 23.1.7 occurs under the law of any other jurisdiction.

- 23.2 The DFE may terminate the Contract with immediate effect by notice and without paying compensation to the Contractor where the Contractor is an individual and:

23.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;

23.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;

23.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;

23.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;

- 23.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
  - 23.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
  - 23.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
  - 23.2.8 any event similar to those listed in clauses 23.2.1 to 23.2.7 occurs under the law of any other jurisdiction.
- 23.3 The Contractor shall notify the DFE immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 months of:
- 23.3.1 being notified that a Change of Control has occurred; or
  - 23.3.2 where no notification has been made, the date that the DFE becomes aware of the Change of Control
- but shall not be permitted to terminate where approval was granted prior to the Change of Control.
- 23.4 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a partnership and:
- 23.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 23.4.2 it is for any reason dissolved;
  - 23.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;
  - 23.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets;
  - 23.4.5 the partnership is deemed unable to pay its debts within the meaning of sections 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
  - 23.4.6 any of the following occurs in relation to any of its partners:
    - 23.4.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
    - 23.4.6.2 a petition is presented for his bankruptcy;
    - 23.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or

- 23.4.6.4. any event similar to those listed in clauses 23.4.1 to 23.4.6 occurs under the law of any other jurisdiction.
- 23.5 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a limited liability partnership and:
- 23.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 23.5.2 it is for any reason dissolved;
  - 23.5.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
  - 23.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
  - 23.5.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
  - 23.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets; or
  - 23.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 23.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 23.5.9 any event similar to those listed in clauses 23.5.1 to 23.5.8 occurs under the law of any other jurisdiction.
- 23.6 References to the Insolvency Act 1986 in clause 23.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 23.7 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
- 23.7.1 the Contractor has not remedied the Default to the satisfaction of the DFE within 21 Business Days or such other period as may be specified by the DFE, after issue of a notice specifying the Default and requesting it to be remedied
  - 23.7.2 the Default is not, in the opinion of the DFE, capable of remedy; or
  - 23.7.3 the Default is a Material Breach.
- 23.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.8.1 the Contractor's warranty in clause 19.1.10 is materially untrue;
  - 23.8.2 the Contractor commits a material breach of its obligation to notify the DFE of any Occasion of Non-Tax Compliance;

- 23.8.3 the Contractor fails to provide details of proposed mitigating factors which, in the DFE's reasonable opinion are acceptable; or
- 23.8.4 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.
- 23.9 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
  - 23.9.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
  - 23.9.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract; or
  - 23.9.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.
- 23.10 If the DFE terminates the Contract under clauses 23.7, 23.8 or 23.9:
  - 23.10.1 and makes other arrangements for the supply of the Services, the DFE may recover from the Contractor the cost reasonably incurred of making those other arrangements; and
  - 23.10.2 the DFE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause 23.
- 23.11 Either Party may terminate the Contract (or any part of it) at any time by giving:
  - 23.11.1 in the case of the Supplier, at least 6 months' prior written notice to the DFE; and
  - 23.11.2 in the case of the DFE, at least 3 months' prior written notice to the Supplier.
- 23.12 If the DFE terminates the Contract under clause 23.11 the DFE shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE.
- 23.13 If any funding from governmental or other sources for the provision of the Services, or for a programme or a project to which the provision of the Services relates is withdrawn, reallocated or no longer available in such a way that the Contract cannot reasonably continue the DFE may terminate the Contract (or any part of it) by serving 3 months' written notice on the Contractor.
- 23.14 If the DFE terminates the Contract under clause 23.13 the DFE shall pay to the Contractor for Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs), provided that the Contractor shall use all reasonable endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavoidability of such costs.

- 23.15 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the DFE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 23.16 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within 90 Business Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the DFE exercising its rights under clause 8.6 or to Force Majeure.
- 23.17 Save as otherwise expressly provided in the Contract:
- 23.17.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 23.17.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the DFE or the Contractor under clauses 8 (Charges), 9 (Tax and VAT), 10 (Prevention of Corruption), 12 (Intellectual Property Rights), 13 (Data, Systems Handling and Security), 15 (Confidentiality), 16 (Freedom of Information), 17 (Official Secrets and Finance Act), 18 (Liability), 19 (Warranties and Representations), 23 (Termination) 24 (Retendering and Handover), 25 (Exit Management), 26 (Audit), and 37 (Governing Law and Jurisdiction).

## **24. RETENDERING AND HANDOVER**

- 24.1 Within 30 days of being requested by the DFE, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable the DFE to issue tender documents for the future provision of replacement services.
- 24.2 The DFE shall take reasonable precautions to ensure that the information referred to in clause 24.1 is given only to potential contractors who have qualified to tender for the future provision of the replacement services.
- 24.3 The DFE shall require that all potential Contractors treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the DFE; and that they shall not use it for any other purpose.
- 24.4 The Contractor shall allow access to the Premises in the presence of DFE's authorised representative, to any person representing any potential contractor whom the DFE has selected to tender for the future provision of the Services.
- 24.5 If access is required to the Contractor's Premises for the purposes of clause 26.4, the DFE shall give the Contractor 7 days' notice of a proposed visit together with the names of all persons who will be visiting.
- 24.6 The Contractor shall co-operate fully with the DFE during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 24.7 Within 10 Business Days of being requested by the DFE, the Contractor shall transfer to the DFE, or any person designated by the DFE, free of charge, all computerised



filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the DFE.

## **25. EXIT MANAGEMENT**

- 25.1 If the DFE requires a continuation of all or any of the Services at the end of the Term, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the DFE and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- 25.2 The Contractor will, within 3 months of the Effective Date, deliver to the DFE, a plan which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the DFE and/or its Replacement Contractor at the end of the Term[, which shall include a process to be followed to enable enrolled students to complete their qualifications in the event that this Contract is terminated] (an "**Exit Plan**").
- 25.3 Within 30 days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan .If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 36.
- 25.4 The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update the Contractor will submit the revised Exit Plan to the DFE for review. Within 30 days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within 30 days, such dispute shall be referred to the dispute resolution procedure in clause 36.
- 25.5 If the DFE requests, the Contractor shall deliver to the DFE details of all licences for software used in the provision of the Services including the software licence agreements.
- 25.6 Within one month of receiving the software licence information described above, the DFE shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the DFE a plan for licence transfer.
- 25.7 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the DFE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than 15 Business Days from the date that that request was made.
- 25.8 Upon expiry or termination of this Contract (and otherwise upon request of the Party to whom the property belongs) each Party shall, at the option of the other, promptly and securely return or destroy the other Party's property.

## **26. AUDIT**

- 26.1 The Contractor shall keep and maintain until 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all Charges.

- 26.2 The Contractor agrees to make available to the DFE, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services
- 26.3 The Contractor shall permit duly authorised representatives of the DFE and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- 26.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the DFE and for carrying out examinations into the economy, efficiency and effectiveness with which the DFE has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

**27. ENTIRE AGREEMENT**

- 27.1 The Contract contains all the terms which the Parties have agreed in relation to the subject matter of the Contract and supersedes any prior written or oral agreements, representations or understandings between the Parties.
- 27.2 Nothing in this clause 27 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

**28. PARTNERSHIP**

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

**29. WAIVER**

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

**30. CHANGE CONTROL**

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

**31. COUNTERPARTS**

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

**32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 32.1 The provisions of clauses 7.4 and 12.6 confer benefits on a Replacement Contractor and are intended to be enforceable by a Replacement Contractor by virtue of the Contracts (Rights of Third Parties ) Act 1999 ("**CRTPA**").
- 32.2 Subject to clause 32.1, a person who is not a Party has no right under CRTPA to enforce provisions of the Contract but this does not affect any right or remedy of any

person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.

32.3 A Replacement Contractor may not enforce or take steps to enforce the provisions of clauses 7.4 or 12.6 without DFE's prior written consent.

32.4 The Parties may amend the Contract without the consent of any Replacement Contractor.

### **33. CONFLICTS OF INTEREST**

33.1 The Contractor shall:

33.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and

33.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the DFE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 33 as a "**Conflict of Interest**".

33.1.3 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 33 the Contractor shall forthwith provide full particulars to the DFE.

33.2 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.

33.3 Without prejudice to the foregoing provisions of this clause 33, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:

33.3.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the DFE (acting reasonably); and

33.3.2 give the DFE a comprehensive and detailed written statement of the action it had taken.

33.4 If the DFE is not satisfied with the Contractor's actions, the Contractor shall, on request by the DFE promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).

33.5 Without prejudice to any other right or remedy it may have, the DFE may terminate the Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the DFE, there is any continuing breach by the Contractor of the provisions of this clause 33.

### **34. FURTHER ASSURANCE**

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

## **35. NOTICES**

- 35.1 Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, facsimile or e-mail, addressed to the recipient at its registered office or its address (or such other address, facsimile number or e-mail address as may be notified in writing from time to time).
- 35.2 The notice, demand or communication shall be deemed to have been duly served:
- 35.2.1 if delivered by hand, when left at the proper address for service;
- 35.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;
- 35.2.3 if given or made by facsimile or e-mail, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post or (where being sent to an address in a different country to where posted) airmail to the other Party within 24 hours after transmission and that, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).
- 35.3 If proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.

## **36. DISPUTE RESOLUTION**

- 36.1 Any Dispute shall be dealt with in accordance with this clause 36.
- 36.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within 15 days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.
- 36.3 If a Dispute cannot be resolved by negotiation as referred to in clause 36.2 within 30 days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs.

## **37. GOVERNING LAW AND JURISDICTION**

- 37.1 The Contract and any non-contractual obligations arising out of or connection with it will be governed by and construed in accordance with English Law.
- 37.2 The courts of England shall have exclusive jurisdiction to settle any dispute which arises out of or in connection with the Contract.
- 37.3 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.

### Schedule 3

#### Financials

1. The DFE shall pay the Contractor the Charges in accordance with the Contract, subject to successful delivery of the Services against the KPIs or Service Levels set out in schedule 4. The Charges are inclusive of all expenses incurred by the Contractor in relation to the provision of the Services and unless agreed otherwise between the Contractor and the DFE, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
2. The DFE may review the detailed costs set out in the Implementation Plan to ensure that the Contract is value for money.
3. Indexation shall not apply to the Charges.
4. The Contractor shall be entitled to invoice the Charges following acceptance by the DFE of satisfactory completion of the Services or, where performance of the Services will continue, either monthly in arrears or on satisfactory completion of milestones as set out in the delivery milestones, outputs or outcomes (as set out in the tables below).
5. The DFE may make exceptions to the invoicing arrangements at paragraph 4 above to allow payment in advance for items such as bursary payments, where the Contractor can evidence a need for payment in advance. The Contractor may request payment in advance by email submission to the Department, setting out the evidence in support of its request no less than 14 days before the date payment is required.

**Table 1**

**Breakdown by cohort and service element: Redacted**

**Breakdown by financial year: Redacted**

<b>DfE Financial Year</b>	<b>Total</b>
<b>2018/19</b>	216,684.48
<b>2019/20</b>	2,624,117.91
<b>2020/21</b>	15,269,810.99
<b>2021/22</b>	19,209,229.17
<b>2022/23</b>	7,307,619.97
<b>2023/24</b>	<u>943,832.54</u>
<b>Total</b>	<u>45,571,295.06</u>

The breakdown by financial year is dependent on the final payment mechanism arrangements.

**Breakdown by student number (excluding lost economies of scale costs): Redacted**

6. Funds allocated to a particular expenditure heading in Table 1 are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only.

Further information relating to the financials can be found at Section 4 of The Contractor's Solution.

## Schedule 4

### KPIs, Service Levels and Service Credits<sup>1</sup>

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

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

- 2 This schedule 4 sets out the KPIs and Service Levels against which the Contractor shall measure its performance.
- 3 The Contractor shall monitor its performance against each of the KPIs and Service Levels and send the DFE a monthly report detailing the KPIs and Service Levels which were and were not achieved in accordance with the provisions of this schedule 4.

### PERFORMANCE STANDARDS/MEASURES

- 4 The Contractor must meet the Performance Measure for each identified KPI as set out in table 1 below during each Service Period.
- 5 If during a Service Period the Contractor achieves a KPI, no Service Credit will accrue to the DFE in respect of that KPI.
- 6 The Contractor confirms that it has taken Performance Measures and Service Credits into account in calculating the Charges. Both Parties agree that the Performance Measures and Service Credits are a reasonable method of adjusting the Charges to reflect poor Contractor performance.
- 7 The Contractor must meet and comply with all Service Levels as set out within table 2 below.

### CONSEQUENCES OF FAILURE TO MEET KPIS

- 8 A failure to meet at least the required performance level will be considered a "Service Failure" in respect of the KPIs set out in Table 1 below, where the level of underachievement is 5% or more. For example, in the case of KPI1, the performance level considered as a Service Failure is X% (Y% -5%) where Y% is the required performance level.
- 9 If the Contractor's performance level constitutes a Service Failure in one or more of the KPIs listed in Table 2 in any Service Period, DFE will be entitled at its sole discretion, to reduce the total amount of Charges (less the amount of bursaries for that Service Period ("Net Charges")) payable to the Contractor for that Service Period in accordance with this paragraph 9. Regular monitoring and discussions surrounding the KPIs will ensure the DFE is in a more reasonable position to exercise its discretion. The reductions which shall apply are:
  - 9.1 1% of Net Charges for one KPI failed by 5% or more;

- 9.2 2% of Net Charges for two KPIs failed by 5% or more; and
- 9.3 to a maximum of 3% of Net Charges for three or more KPIs failed by 5% or more.
- 10 Without prejudice to its other rights and remedies, if there are one or more Service Failures in 3 (three) consecutive Service Periods, the DfE will be entitled, in its sole discretion, to terminate this Contract on 30 days written notice to the Supplier.

**Table 1 KPIs**

KPI	Measurement period	Performance measure	Service period	Monitoring method	Performance objective/ Service credit applied
Starters	July of starting Year	90% of planned number of participants are recruited and start the summer institute (the planned number is 450 per cohort)	Annual (per cohort)	Internal Management Information	As per contract
PG Dip attainment / ASYE progression	End of year one (October)	85% of starting participants achieve their PGDip qualification and progress into ASYE year	Annual (per cohort)	Internal Management Information	As per contract
ASYE Completion	End of year two (November)	85% of participants starting ASYE complete their ASYE	Annual (per cohort)	Internal Management Information	As per contract
Year two completion / Master's attainment	End of year two (November)	70% of participants starting ASYE complete and achieve their Master's qualification	Annual (per cohort)	Internal Management Information	As per contract

**Table 2 Service Levels**

Service level	Measure	Compliance
Reporting and meetings	Monthly reporting: submit a monthly programme report by the fifteenth business day of the month, including any exception events within this report.	100% - DfE monitoring
	Contractor meetings – monthly	
	Development and operations meetings – as required	
Administration/communication	In delivering the Services offer a responsive and supportive service to participants and their facilitators.	
	Respond to 100% of queries and correspondence within three business days of receipt.	
Finance	Ensure that invoices are submitted to DfE within 10 business days of the end of the relevant charging period/completion of the activity.	
Commercial management	Ensure that Change Control Notes are signed by both parties prior to any additional work being undertaken (DfE or contractor to ensure paperwork is issued in a timely fashion when change required).	
Complaints	Ensure that all administrative personnel are aware of and abide by relevant complaints procedures.	
	Main management contact to report all significant complaints orally and in writing to DfE within three business days.	
Records and	Ensure that all records are maintained and kept up to date throughout	



questionnaires	the term. Records must be updated within five business days of a request being made or an event taking place (subject to system availability). Support the DfE to ensure appropriate questionnaires are completed throughout the term.	
Delivery	Supply appropriate equipment to support the delivery of the Services at any face to face events.	100%- Questionnaire records
	Suitability of venue: events take place in venues and facilities which are relevant to the day. Training shall take place in rooms which are suitable for the size of groups and set up in the style appropriate to the event.	100%-event questionnaires
Workshop Events	ICT should be adequate and meet the minimum specification of the course.	
	Refreshments must be provided and where overnight accommodation is required the facilities must comply with the venue specification.	
Evaluation	Contribute to the evaluation of the effects of its delivery by reviewing service user satisfaction, learning outcomes, improvements in schools/school systems, and the commissioning of impact studies.	

## **Schedule 5**

### **Implementation Plan**

1. The Contractor shall provide the Services in accordance with the Implementation Plan set out below and in Attachment 2: FTSW Contract Schedule 5 – Implementation Plan.
2. The Implementation Plan shall be sufficiently detailed as is necessary to manage the Services and any proposed changes are subject to the Change Control Procedure.
3. The Contractor shall be responsible for implementing and managing the Services and for taking all such steps as may be necessary so as to ensure that from the Service Commencement Date the Contractor is able to provide the Services:
  - 3.1 in accordance with the provisions of the Contract; and
  - 3.2 in a manner that maintains the continuity of Services to the DFE.
4. The Contractor shall monitor its performance against the Implementation Plan and report to the DFE monthly (or more frequently if so required by the DFE) on its performance.

Please see Attachment 2: FTSW Contract Schedule 5 – Implementation Plan **Redacted**

## **Schedule 6**

### **Change Control Procedure**

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

### Change Control Note

:

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

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

<b>Revised daily rate (if applicable)</b>	
<b>Impact on original contract (if applicable)</b>	
<b>Supporting Information (please attach all supporting documentation for this Change Control)</b>	
<b>Terms and Conditions</b>	Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect.
<b>Variation Agreed</b>	
<b>For the Contractor:</b>	<b>For the DFE:</b>
Signature.....	Signature.....
Full Name.....	Full Name.....
Title.....	Title.....
Date.....	Date.....

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

<b>To be entered by the Commercial department:</b>			
<b>Commercial Contact</b>		<b>Reference Number</b>	
<b>Date received</b>		<b>EC Reference</b>	

## Schedule 7

### Key Personnel and Key Sub Contractors

#### Key Personnel

The individuals listed in the table below are Key Personnel: Redacted

Name	Role	Period of Involvement
Josh MacAlister	Chief Executive Officer	Duration of contract
Sam Sims	Chief Operating Officer	Duration of contract
Mary Jackson	Chief Programme Officer	Duration of contract
Lisa Hackett	Delivery Director	Duration of contract
Katie Purser	Recruitment Director	[REDACTED]
Ann-Marie Mcloughlin	Recruitment Director	[REDACTED]
Mark Potter	External Relations Director	Duration of contract
Chris Young	Head of Finance and Compliance	Duration of contract

## Key Sub-Contractors

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

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

## Schedule 8

### Data, Systems Handling and Security

#### Definitions

**Cohort Data**

Any information relating to the cohorts of students

**"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", "Processor," "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer"**

shall have the meanings given in the GDPR;

**"Data Loss Event"**

any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

**"DPA"**

Data Protection Act 2018;

<b>“Data Protection Impact Assessment”</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
<b>“Data Protection Legislation”</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
<b>“Data Subject Request”</b>	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;
<b>“GDPR”</b>	the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>“Law”</b>	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;
<b>“LED”</b>	Law Enforcement Directive (Directive (EU) 2016/680);
<b>“Processor Personnel”</b>	employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;
<b>“Protective Measures”</b>	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those set out in the Contract; and
<b>“Sub-processor”</b>	any third Party appointed to process Personal Data on behalf of the Processor related to this Contract



## 1. COHORT PERSONAL DATA

- 1.1. The Parties acknowledge for the purposes of the Data Protection Legislation that, in relation to the Cohort Data, the Contractor is the Controller for that Cohort Data in its own right. Nothing in this Contract is intended to construe the DFE as Data Controller or Data Processor of that Cohort Data which has no access to such Cohort Data nor determines its purpose or means of processing in any way.
- 1.2. The Contractor agrees that it shall process the Cohort Personal Data in compliance with its obligations under Data Protection Legislation.

## 2. OTHER PERSONAL DATA

- 2.1. Except as otherwise set out in clause 1 of this Schedule 8, the Parties acknowledge that for the purposes of the Data Protection Legislation, the DFE is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 8 Annex 2. The only processing that the Processor is authorised to do is listed in Schedule 8 Annex 2 by the Controller and may not be determined by the Processor.
- 2.2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation
- 2.3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - 2.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
  - 2.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 2.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 2.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
  - 2.4.1. process that Personal Data only in accordance with Schedule 8 Annex 2 , unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - 2.4.2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - 2.4.2.1. nature of the data to be protected;
    - 2.4.2.2. harm that might result from a Data Loss Event;
    - 2.4.2.3. state of technological development; and
    - 2.4.2.4. cost of implementing any measures;
  - 2.4.3. ensure that :

- 2.4.3.1. the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Annex 2 to this Schedule 8);
- 2.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - 2.4.3.2.1. are aware of and comply with the Processor's duties under this clause;
  - 2.4.3.2.2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - 2.4.3.2.3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
  - 2.4.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 2.4.4. not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - 2.4.4.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - 2.4.4.2. the Data Subject has enforceable rights and effective legal remedies;
  - 2.4.4.3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - 2.4.4.4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 2.4.5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 2.4.6. Subject to clause 2.4.8 of this Schedule, the Processor shall notify the Controller immediately if it:
  - 2.4.6.1. receives a Data Subject Request (or purported Data Subject Request);
  - 2.4.6.2. receives a request to rectify, block or erase any Personal Data;
  - 2.4.6.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 2.4.6.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

- 2.4.6.5. 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
- 2.4.6.6. becomes aware of a Data Loss Event.
- 2.4.7. The Processor's obligation to notify under clause 2.4.6 of this Schedule shall include the provision of further information to the Controller in phases, as details become available.
- 2.4.8. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 2.4.6 of this Schedule (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
  - 2.4.8.1. the Controller with full details and copies of the complaint, communication or request;
  - 2.4.8.2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 2.4.8.3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 2.4.8.4. assistance as requested by the Controller following any Data Loss Event;
  - 2.4.8.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 2.4.9. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - 2.4.9.1. the Controller determines that the processing is not occasional;
  - 2.4.9.2. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 2.4.9.3. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.4.10. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.4.11. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 2.4.12. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
  - 2.4.12.1. notify the Controller in writing of the intended Sub-processor and processing;

- 2.4.12.2. obtain the written consent of the Controller;
  - 2.4.12.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 2 of this Schedule such that they apply to the Sub-processor; and
  - 2.4.12.4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 2.4.13. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 2.4.14. The Controller may, at any time on not less than 30 Business Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 2.4.15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Business Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

**SCHEDULE 8 – ANNEX 1**

**DFE SECURITY STANDARDS**

<p>“BPSS” “Baseline Personnel Security Standard”</p>	<p>a level of security clearance described as pre-employment checks in the National Vetting Policy. Further information can be found at: <a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a></p>
<p>“CCSC” “Certified Cyber Security Consultancy”</p>	<p>is NCSC's approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. This approach builds on the strength of CLAS and certifies the competence of suppliers to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors. See website: <a href="https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy">https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</a></p>
<p>“CCP” “Certified Professional”</p>	<p>is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors. See website: <a href="https://www.ncsc.gov.uk/scheme/certified-professional">https://www.ncsc.gov.uk/scheme/certified-professional</a></p>
<p>“CC” “Common Criteria”</p>	<p>the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.</p>
<p>“CPA” “Commercial Product Assurance” [formerly called “CESG Product Assurance”]</p>	<p>is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry. See website: <a href="https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa">https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</a></p>
<p>“Cyber Essentials” “Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.</p> <p>There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers: <a href="https://www.iasme.co.uk/apply-for-self-assessment/">https://www.iasme.co.uk/apply-for-self-assessment/</a></p>

<p>"Department's Data" "Department's Information"</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Contractor by or on behalf of the Department; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;</p>
<p>"DFE" "Department"</p>	<p>means the Department for Education</p>
<p>"Departmental Security Standards"</p>	<p>means the Department's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.</p>
<p>"Digital Marketplace / GCloud"</p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.</p>
<p>"FIPS 140-2"</p>	<p>this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled 'Security Requirements for Cryptographic Modules'. This document is the de facto security standard used for the accreditation of cryptographic modules.</p>
<p>"Good Industry Practice" "Industry Good Practice"</p>	<p>means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>"Good Industry Standard" "Industry Good Standard"</p>	<p>means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>"GSC" "GSCP"</p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>

“HMG”	means Her Majesty’s Government
“ICT”	means Information and Communications Technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
“ISO/IEC 27001” “ISO 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	is the International Standard describing for Business Continuity
“IT Security Health Check (ITSHC)” “IT Health Check (ITHC)” “Penetration Testing”	means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.
“Need-to-Know”	the Need-to-Know principle is employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.
“NCSC”	The National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Authority for Information Assurance. The NCSC website is <a href="https://www.ncsc.gov.uk">https://www.ncsc.gov.uk</a>
“OFFICIAL” “OFFICIAL-SENSITIVE”	the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.  the ‘OFFICIAL–SENSITIVE’ caveat is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the Government Security Classification Policy.
“Secure Sanitisation”	Secure sanitisation is the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. Some forms of sanitisation will allow you to re-use the media, while others are destructive in nature and render the media unusable. Secure sanitisation was previously covered by “Information Assurance Standard No. 5 - Secure

	<p>Sanitisation” (“IS5”) issued by the former CESC. Guidance can now be found at: <a href="https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media">https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</a></p> <p>The disposal of physical documents and hardcopy materials advice can be found at: <a href="https://www.cpni.gov.uk/secure-destruction">https://www.cpni.gov.uk/secure-destruction</a></p>
<p>“Security and Information Risk Advisor”  “CCP SIRA”  “SIRA”</p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: <a href="https://www.ncsc.gov.uk/articles/about-certified-professional-scheme">https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</a></p>
<p>“SPF”  “HMG Security Policy Framework”</p>	<p>This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely. <a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a></p>
<p>”Tailored Assurance”  [formerly called “CTAS”, or,  ”CESG Tailored Assurance”]</p>	<p>is an ‘information assurance scheme’ which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector customers procuring IT systems, products and services, ranging from simple software components to national infrastructure networks. <a href="https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology">https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology</a></p>



- 1.1. The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 1.2. Where the Contractor will provide ICT products or services or otherwise handle information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) 25 May 2016, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
- 1.3. The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4. The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service, and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 1.5. Departmental Data being handled in the course of providing an ICT solution or service must be segregated from all other data on the Contractor’s or sub-contractor’s own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 1.15 below.
- 1.6. The Contractor shall have in place and maintain physical security, in line with those outlined in ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access) to premises and sensitive areas
- 1.7. The Contractor shall have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.
- 1.8. The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 1.9. Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- 1.10. Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 1.11 and 1.12 below.

- 1.11. Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.12. All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.13. Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- 1.14. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 1.15. At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- 1.16. Access by Contractor or sub-contractor staff to Departmental Data shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Contractor or sub-contractor staff must complete this process before access to Departmental Data is permitted.
- 1.17. All Contractor or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 1.18. The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.

- 1.19. Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, or any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- 1.20. The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 1.21. The Contractor or sub-contractors providing the service will provide the Department with full details of any storage of Departmental Data outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management, support or development function from outside the UK. The Contractor or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- 1.22. The Department reserves the right to audit the Contractor or sub-contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any sub-contractors, compliance with the clauses contained in this Section.
- 1.23. The Contractor shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party suppliers, sub-contractors or partners who could potentially access Departmental Data in the course of providing this service.
- 1.24. The Contractor and sub-contractors shall undergo appropriate security assurance activities as determined by the Department. Contractor and sub-contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation such as completing the DfE Security Assurance Model (DSAM) process or the Business Service Assurance Model (BSAM). This will include obtaining any necessary professional security resources required to support the Contractor's and sub-contractor's security assurance activities such as: a NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA)

## SCHEDULE 8 ANNEX 2

### Processing, Personal Data and Data Subjects

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

- 1 The contact details of the Controller's Data Protection Officer are: **Emma Wharram, DfE, Sanctuary Buildings, Great Smith Street, London SW1 P 3**
- 2 The contact details of the Processor's Data Protection Officer are: **Chris Young, Frontline, Coram Campus, 41 Brunswick Square, London, WC1N 1AZ**
- 3 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that, other than set out in clause 1 of this Schedule 8, for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with clause 1 of this Schedule 8.
Subject matter of the processing	[N/A.]
Duration of the processing	[N/A.]
Nature and purposes of the processing	[N/A.]
Type of Personal Data	[N/A.]

Categories of Data Subject	[N/A.]
Plan for return and destruction of the data  once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[N/A.]

**Schedule 9**

**Commercially Sensitive Information**

1. The Contractor regards the following information as Commercially Sensitive Information of the Contractor:

CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY
Contractor's detailed costs and charges information as set out in Schedule 3 ( <i>Financials</i> )	Contractive effective date - [●]	Until otherwise notified by the Contractor.
All the information contained in Schedule 5 ( <i>Implementation Plan</i> )	Contractive effective date - [●]	Until otherwise notified by the Contractor.
Information on Key Personnel and Sub-contractors as set out in Schedule 7 ( <i>Key Personnel and Key Sub-Contractors</i> )	Contractive effective date - [●]	Until otherwise notified by the Contractor.
All the information contained in Schedule 10 ( <i>Contractor's Solution</i> )	Contractive effective date - [●]	Until otherwise notified by the Contractor.

**Schedule 10**

**The Contractor's Solution**

Please see Attachment 3: FTSW Contract Schedule 10 – The Contractor's Solution **Redacted**