

**Framework Agreement**

**Trialling and Sampling**

**Agreement Number STA 0166**

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**FRAMEWORK AGREEMENT FOR Trialling and Sampling Services**

 **This Framework Agreement is dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Parties**

1. The Secretary of State for Education whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (“the Department”); and
2. The Supplier

**Background**:

1. If the Authority or any Other Contracting Body decides to source any of the Goods and/or Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to award Call Off Agreements for the Goods and/or Services from the Supplier by following Framework Schedule 8 (Call Off Procedure).
2. The Supplier recognises that a failure to provide the Services completely, on time, securely and in accordance with the standards set out in this Agreement is likely to:
3. bring significant distress and damage to pupils, schools and their teachers; and
4. result in substantial detriment to the reputation and integrity of the Government, the Department and the tests, by causing the general public to lose confidence in them.

**Recitals**

The Supplier has agreed to provide the Services on the terms and conditions set out in this Agreement.

The Department's reference number for this Agreement is **STA 0166**.

1. Definition and Interpretation
	1. In this Agreement, the following words shall mean:

|  |  |
| --- | --- |
| **Acceptance** | has the meaning given in Clause 34 and “**Accepted**” shall be construed accordingly; |
| **Affiliate** | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time; |
| **Agreement** | this agreement comprising the recitals, clauses and schedules hereto, along with any Call-Off Contracts; |
| **Best Endeavours** | means taking all steps that a reasonable and prudent businessman would take when acting in his own best interests; |
| **BIL** | business impact level assigned to information in accordance with the SPF in order to determine the appropriate level of protection to be afforded to such information; |
| **Brand Guidelines** | the *DfE Style Guide* and *NCA (national curriculum assessment) Identity Guidelines* as updated and amended from time to time by the Department;  |
| **Business Continuity Plan** | has the meaning given to it in Clause 38; |
| **Call-Off Contract** | a document executed by the Parties for the provision and receipt of a Call-Off Service, substantially in the form set out in Schedule 3; |
| **Call-Off Service** | the Services set out in a Call-Off Contract; |
| **Call-Off Value** | means the value specified in the Call-Off Contract, or if no amount is specified, an amount equal to the total Charges paid or payable under the Call-Off Contract; |
| **Change** | has the meaning given to it in Clause 15; |
| **Change Control Procedure** | the procedure for making Changes to either this Agreement or an existing Call-Off Service as specified in Clause 15;  |
| **Change of Control** | when applied to any person shall be deemed to have occurred on each occasion on which any person other than those who Control such person on the Effective Date subsequently acquire Control of it;  |
| **Charges** | the charges for the Services as set out Schedule 2 and this Agreement or as set out in a Call-Off Contract; |
| **Confidential Information** | the Department's Confidential Information and/or the Supplier's Confidential Information; |
| **Contract Manager** | James HeathcoteStandards and Testing Agency53-55 Butts RoadEarlsdon ParkCoventryCV1 3BH |
| **Contracting Department** | any contracting department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Department; |
| **Control or Controlled** | is determined by reference to the provisions of Section 450 of the Corporation Taxes Act 2010;  |
| **Copyright** | any and all copyright, design right (as defined by the Copyright Act) and all other rights of a like nature which may, during the course of this Agreement, come into existence in or in relation to any Work; |
| **Copyright Act** | means the Copyright, Designs and Patents Act 1988; |
| **Crown and/or Her Majesty** | Queen Elizabeth II and any successor to Her Majesty; |
| **Crown Body** | any department, office or agency of the Crown; |
| **Data****Data Protection Impact Assessment**  | as defined in the DPA;an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. |
| **Data Controller****Data Loss Event****DPA 2018** | take the meaning given in the GDPR;any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.Data Protection Act 2018 |
| **Data Processor** | take the meaning given in the GDPR; |
| **Data Protection Legislation** | (i) the GDPR, the LED and any applicable nationalimplementing Laws as amended from time to time (ii) the DPA 2018 [ subject to Royal Assent ]to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Lawabout the processing of personal data and privacy; |
| **Data Subject****Data Subject Access Request** | take the meaning given in the GDPR;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. |
| **Default** | any breach by a Party of its obligations under this Agreement or of any warranty, condition or any other term or any default, act, omission, negligence, or misstatement of a Party or its employees, agents or subcontractors in connection with the subject matter of the Agreement; |
| **Delay** | the period of time by which the implementation of the Services by reference to the Implementation Plan is delayed arising from a failure to Achieve a Milestone; |
| **Department’s Confidential Information** | all Personal Data and any information that relates to the business, affairs, developments, trade secrets, Know-how, personnel, and suppliers of the Department, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential; |
| **Departmental Assets** | Departmental Premises, IT systems and information with a classification up to confidential; |
| **Departmental Security Standards** | the Department’s specification for security that the Supplier is required to deliver; |
| **Departmental Data** | all data or records of whatever nature and in whatever form: (i) supplied by or on behalf of the Department; or (ii) relating to the conduct of the tests, pupils, Markers, the Department’s staff or otherwise relating to the operations or functions of the Department, or in relation to any Call-Off Contract or as created or processed as part of, or in connection with, the Services. For the avoidance of doubt, this excludes personal and sensitive information for test administrators, Supplier staff or other consultants used in the provision of the services;  |
| **Departmental Delay** | has the meaning given in Clause 11; |
| **Departmental Dependencies** | in respect of a Call-Off Service, those activities specified in Schedule 6 (Departmental Dependencies) to be carried out by the Department or a Departmental Service Provider to facilitate the Supplier’s provision of the Services; |
| **Departmental Materials** | all tests, test scripts, test items, test booklets and other project documentation delivered as part of the Services (including meeting minutes, project board reports and risk and issues logs) training materials, and other material of a similar nature produced by or on behalf of the Supplier for the Department, or in conjunction with the Department, under this Agreement (but excluding the Software);  |
| **Departmental Policies and Procedures** | the STA National Curriculum Assessments and Marker Recruitment Policy, as amended or replaced from time to time by the Department; |
| **Departmental Premises** | those premises which are owned, leased or occupied by the Department from time to time; |
| **Departmental Security Policy** | the Department’s security policies and procedures as updated, amended or replaced from time to time by the Department; |
| **Departmental Service Provider** | has the meaning give in Clause 12; |
| **Departmental Software** | the source code and object code of software (and any additions, modifications or developments thereto, whether made before or after the Effective Date) which is: (i) owned by the Department as at the Effective Date or as at the effective date of a Call-Off Contract; or (ii) developed or procured for the Department as the subject of a Call-Off Contract;  |
| **Departmental System** | The Department’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Department or the Supplier in connection with the Agreement which is owned by or licensed to the Department by a third party and which interfaces with the Supplier System or which is necessary for the Department to receive the Services; |
| **Dispute** | any dispute or disagreement between the Parties arising out of or in connection with this Agreement (including in connection with any Call-Off Contract), including any question regarding the existence, validity or termination of this Agreement or a Call-Off Contract; |
| **DPA** | the Data Protection Act 1998; |
| **DOTAS** | the Disclosure of Tax Avoidance Schemes rules which require a promoter 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 NICs by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992; |
| **EEA** | European Economic Area; |
| **Effective Date** | the date of this Agreement; |
| **EIR** | the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government department in relation to such regulations; |
| **Exit Phase** | in respect of the Agreement or a Call-Off Contract the period: (a) commencing on the day after the date on which the relevant Termination Notice (or any other notice given to terminate the Agreement or the Call-Off Contract) is served by either Party; and (b) ending on the date one month after the date of the termination of the Agreement or the Call-Off Contract (as appropriate); |
| **FOIA** | the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation; |
| **Force Majeure Event** | an act or event affecting the performance by a Party of its obligations hereunder: (a) arising from events beyond its reasonable control including disaster, fire, flood, pandemic, terrorist attack or an industrial dispute (other than one by the employees of the Supplier, its Group Companies or its Subcontractors and only where a substitute third party is not reasonably available); and (b) which could not have been avoided through the exercise of Good Industry Practice, provided that a Force Majeure Event shall not include any claim by a third party that any software, data or other materials provided by the Supplier or the Subcontractors infringes its Intellectual Property Rights; |
| **General Anti-Abuse Rule** | (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; |
| **GDPR****Go Live Date** | the General Data Protection Regulation (Regulation (EU) 2016/679)the date on which the Supplier commences live Services delivery following implementation; |
| **Good Industry Practice** | the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector; |
| **Good Industry Standard** | 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; |
| **Government** | the government of the United Kingdom; |
| **Group Company** | shall, in respect of any company, mean that company and any and all group undertakings (as such term is defined in Section 1161 of the Companies Act 2006 as amended) from time to time of that company; |
| **Halifax Abuse Principle** | the principle explained in the CJEU Case C-255/02 Halifax and others; |
| **Her Majesty’s Government** | the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant or officer of such Government; |
| **HMRC** | Her Majesty’s Revenue & Customs; |
| **HMSO** | Her Majesty's Stationery Office; |
| **ICT** | information and communications technology; |
| **ICT Environment** | the Department’s IT system and the Supplier’s IT system; |
| **Information** | as defined in section 84 of the FOIA;  |
| **Insolvency Event** | the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity:1. the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;
2. the appointment of an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the entity's undertaking, assets, rights or revenue;
3. the entity entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors;
4. the entity being unable to pay its debts or being [capable of being] deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
5. the entity entering into any arrangement, compromise or compromise or composition in satisfaction of its debts with its creditors;

However, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event and amalgamation shall not amount to an Insolvency Event; |
| **Insurance Policies** | has the meaning given in Clause 24 (Insurance); |
| **Intellectual Property Rights** | means patents, trademarks, service marks, utility models, inventions, logos, (whether registrable or otherwise), applications for any of the foregoing, Copyright, domain names, Know-how, database rights, trade or business names, 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; |
| **IT Security Health Check** | an assessment to identify vulnerabilities in IT systems and networks which may compromise the confidentiality, integrity or availability of information held on that IT system; |
| **ITIL** | the Information Technology Infrastructure Library suite of publications as issued and updated by the Government from time to time; |
| **Key Employees** | has the meaning given in Clause 17.9; |
| **Key Milestone** | in respect of a Call-Off Contract, an event or task, as described in the Call-Off Contract, which is expressed in the Call-Off Contract to be a key milestone; |
| **Key Subcontract** | each Subcontract with a key Subcontractor; |
| **Know- how** | confidential and proprietary industrial and commercial information and techniques in any form including drawings, formulae, test results, reports, project reports and testing procedures, instruction and training manuals, tables of operating conditions, market forecasts, lists and particulars of the Department and suppliers; |
| **Lead Marker** | has the meaning given to it in Clause 17; |
| **Local Authority** | a tier of local government within England which has responsibility for education services; |
| **Loss** | any awards, claims, compensation, costs, damages, demands, expenses, fines, loss, order, penalty and payment made by way of settlement, of whatsoever nature; |
| **Malicious Software** | any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence; |
| **Management Information** | the operational management information and performance reports to be provided by the Supplier to the Department, as specified in Schedule 4 and/or any Call-Off Contract in force from time to time, covering, but not limited to information on the number of administrators recruited, the number of administrators trained, number of administrators with valid CRBs, school recruitment, test scripts issued, test scripts completed and returned, provision of scanned archive test scripts, summary of queries received from schools and track and trace data for transport of materials; |
| **Marker** | a person engaged to mark a test; |
| **Marker Contract** | a contract under which a named Marker’s services have been engaged; |
| **Marker Period** | from Marker recruitment to start of data capture in each trialling Call-Off Contract where marking is included; |
| **Milestone** | an event or task as set out in a Call-Off Contract as a milestone or a Key Milestone (and as may be more particularly described in Schedule 1);  |
| **Milestone Date** | the scheduled date for completion set against a Milestone in a Call-Off Contract as may be amended by the Parties in the Project Plan; |
| **MoR** | the best practice guidance for effective management of risk as issued and updated by the Government from time to time; |
| **NICs** | National Insurance Contributions; |
| **Occasion of Tax Non-Compliance** | (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion. |
| **Off-the-Shelf** | in relation to software, software that is licensed on terms that would not normally be negotiated (save in respect of the cost of the licence) and is readily and/or generally available to companies, businesses, educational institutions and/or members of the public; |
| **Ofqual** | the Office of the Qualifications and Examinations Regulator; |
| **Personal Data** | as defined in the DPA; |
| **Personnel** | the Supplier’s employees and agents, the Subcontractors and the employees, agents and subcontractors of the Subcontractors engaged in the provision of the Services;  |
| **Personnel Security Standard** | a government wide requirement including checks on identity, employment history, nationality and immigration status and the declaration of unspent criminal records; |
| **PID** | a project initiation document in respect of a Call-Off Service; |
| **PRINCE2** | the best practice guidance for effective project management, as issued and updated by the Government from time to time; |
| **Process** | as defined in the DPA; |
| **Process Document** | a document setting out processes and procedures used in the delivery of the Call-Off Service, including interfaces with Subcontractors, the Departmental Service Providers, stakeholders and other relevant third parties; |
| **Processing** | as defined in the DPA; |
| **Prohibited Act** | means:(a) to directly or indirectly offer, promise or give any person working for or engaged by the Department a financial or other advantage to:i) induce that person to perform improperly a relevant function or activity; orii) 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 Agreement;(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; oriii) the defrauding, attempting to defraud or conspiring to defraud the Department;(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 United Kingdom; |
| **Project Closure Report** | has the meaning given in Clause 28.2.1; |
| **Project Plan** | a plan setting out the resources, tasks and timescales required to be performed to mobilise and deliver the Call-Off Service together with any revisions the Supplier proposes to make to the Milestone Dates set out in the Call-Off Contract; |
| **Property** **Protective Measures** | the property, other than real property, issued or made available to the Supplier by the Department in connection with the Agreement;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. |
| **Rate Card** | the rate card for Personnel as set out in Schedule 2; |
| **Regulations** | any laws, regulations, regulatory constraints, obligations or rules (including binding codes of conduct and binding statements of principle incorporated and contained in such rules) applicable to the existence or operation of this Agreement or the provision of any part of the Services from time to time; |
| **Regulatory Body** | those Government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Department and "Regulatory Body"shall be construed accordingly; |
| **Regulatory Change** | has the meaning given in Clause 41; |
| **Relationship Manager** | as the context requires, the relationship manager of either the Department or the Supplier, as identified below:1. in relation to the whole Agreement for the Department,
2. in relation to the whole Agreement for the Supplier, and
3. in relation to a particular Call-Off Service, as specified in the relevant Call-Off Contract;
 |
| **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** | HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established; |
| **Request for Information** | a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR; |
| **Request for Information** | a request for information or an apparent request under FOIA or the EIR received by the Department, the Supplier, the Subcontractors or another relevant Regulatory Authority or public body (as defined by FOIA) or public authority (as defined by the Environmental Information Regulations 2004); |
| **Security Plan** | the Supplier's security plan prepared as part of their tender and included in a schedule (Security Requirements) to the Agreement; |
| **Security Policy** | the Department's security policy annexed to the Security Requirements and Plan schedule as updated from time to time; |
| **Sensitive Personal Data** | as defined in the DPA; |
| **Service Commencement Date** | in relation to a Call-Off Contract, the date on which the relevant Call-Off Service shall commence, as specified in the Call-Off Contract; |
| **Service Element** | part of a Call-Off Service as identified in a Call-Off Contract and described in more detail in Schedule 1; |
| **Services** | the services the Supplier agrees to provide under this Agreement from time to time including any Call-Off Services; |
| **SME** | a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC; |
| **Software** | the Supplier Software, the Third Party Software and the Departmental Software;  |
| **Source Code** | the computer programming code of the Software, in human-readable form and in such form that can be compiled or interpreted into equivalent object code, together with all technical information and documentation (including all specifications, input and output formats, algorithms and file structures) that are necessary for the use, reproduction, modification and enhancement of such software or that have been used for such purposes; |
| **SPF** | has the meaning given to it in Clause 37.1; |
| **Subcontract** | any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof; |
| **Subcontractor****Sub-processor** | a subcontractor of the Supplier (including any of the Supplier’s Group Companies) which performs part of the Service;any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement; |
| **Successor Operator** | an entity (which may include the Department) succeeding the Supplier in the provision or operation of services similar to the Services or any part thereof (including any Call-Off Service); |
| **Supplier Staff** | all employees, agents and contractors of the Supplier and/or of any Subcontractor; |
| **Supplier Software** | the software used in the provision of the Services other than the Third Party Software and the Departmental Software, specifically excludes pre-existing Intellectual Property Rights and software including but not limited to Suppliers Register of Schools, Survey Admin System, School Portal and on-screen marking system; |
| **Supplier’s Contract Manager** |  |
| **Supplier System** | the computer systems used by or on behalf of the Supplier to provide all or part of the Services including the Software but excluding the Departmental System; |
| **Term** | the period from the Effective Date until the termination or expiry of the Agreement;  |
| **Termination Notice** | a notice in writing, served by one Party on the other, in accordance with this Agreement to terminate this Agreement, a Call-Off Contract or a Service Element; |
| **Territory** | the United Kingdom (and the locations, to the extent outside the United Kingdom, of the British Forces Posted Overseas schools), it being understood that, insofar as the Services include the operation and maintenance of a website on which the Trade Marks are mentioned, no territorial restriction shall apply to the use of the Trade Marks on such website; |
| **Third Party Software** | any software used in the provision of the Services, the Intellectual Property Rights in which are owned by a third party; |
| **Time and Materials Basis** | that the cost of a service or activity shall be the sum of:(i) the labour costs of the Personnel engaged in the performance of that service or activity. Such sum shall be equal to the amount of time directly and necessarily spent by such Personnel in the performance of such service or activity at the rates set out in the Rate Card (or in the absence of an appropriate rate in the Rate Card, at cost); plus(i) any payments to third parties directly and necessarily made in the performance of such service or activity. Such payments to be passed through r with the benefit of any volume or other related discountprovided that: the Supplier must use Best Endeavours to use efficiently all resources chargeable to the Department in respect of that service or activity so as to minimise the cost to the Department; |
| **Trade Marks** | the registered and unregistered trademarks, names, logos and devices, brief particulars of which are set out in the Brand Guidelines or specified in writing by the Department from time to time; |
| **VAT** | value added tax and any tax of a similar fiscal nature (including, without limitation, any tax of a similar fiscal nature imposed in addition to, or as a replacement for, such tax);  |
| **Virus** | any “back door”, “time bomb”, “trojan horse”, “worm”, “drop dead device”, “virus” or other computer software routine intended or designed to: (i) disable, damage, erase, disrupt or impair the normal operation of; or (i) provide unauthorised access to or modification to,computer systems or any software or information stored on those computer systems |
| **Work** | any and all works including but not limited to literary, dramatic, musical or artistic works, sound recordings, films, broadcasts or cable programmes, typographical arrangements and designs (as the same are defined in the Copyright Act) which are created from time to time during the course of this Agreement by the Supplier or by or together with others at the Supplier's request or on its behalf and where such works directly relate to or are created in respect of the performance of this Agreement or any part of it; |
| **Working Day** | any day other than a Saturday, Sunday or public holiday in England and Wales. |

* 1. References to “Clauses” and “Schedules” mean clauses of and schedules to this Agreement. The provisions of the Schedules shall be binding on the parties as if set out in full in this Agreement.
	2. References to the singular include the plural and vice versa and references to any gender include both genders. References to a person include any individual, firm, unincorporated association or body corporate.
	3. References to the “Parties” means the Department and the Supplier and their respective successors and permitted assigns. References to a “third party” or “third parties” shall not include the Group Companies of the Supplier.
	4. If there is any conflict or ambiguity between any sections of the Agreement, the sections shall be applied in the following order of precedence: the Clauses; the Schedules; the Call-Off Contracts; and any other document referred to in this Agreement.
	5. If the Supplier becomes aware of a conflict between a Call-Off Contract and any other part of this Agreement, the Supplier shall promptly notify the Department of such conflict and shall follow the Department’s instructions in connection with such conflict.
1. Supplier Appointment
	1. The Supplier is appointed by the Department under this Agreement as a potential, non-exclusive provider of the Services and any other trialling and sampling services the Department may wish to purchase from time to time. Nothing in this Agreement prevents the Department or any persons connected with it from acquiring the Services or services similar to the Services from another supplier during the Term or from performing any such services for itself internally. Nothing in this Agreement represents a guarantee of volume or value guarantee granted by the Authority and/or Other Contracting Bodies in relation to the provision of the Goods and/or Services by the Supplier.
2. Status of Supplier
	1. In carrying out its obligations under this Agreement the Supplier is acting as principal and not as the agent of the Department.
	2. The Supplier shall not say or do anything that may lead any person to believe that the Supplier is acting as the agent of the Department.
3. Assignment
	1. Neither Party shall assign, novate or otherwise transfer any of its rights or obligations under this Agreement (including in respect of a Call-Off Contract) to any person without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed; except that the Department shall be entitled to assign or novate this Agreement (or a Call-Off Contract) to a body or bodies which succeeds the Department or undertakes equivalent functions or duties to the Department in accordance with an Act of Parliament, a direction of a Government body or a Regulatory Authority’s request, without the Supplier’s consent and the Supplier shall enter into such documents as are reasonably necessary for this purpose.
4. Third Party Rights
	1. This Agreement does not create any right or benefit enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999) except for: (i) a person who is a permitted successor or assignee of the rights or benefits of a Party that may enforce such rights or benefits; and (ii) a Successor Operator.
5. Framework Commencement and Term
	1. This Agreement commences on the Effective Date and ends 4 years after the Effective Date unless terminated earlier in accordance with its terms.
6. Call-Off Contracts – Execution, Commencement and Term
	1. If the Authority or any Other Contracting Body decides to source any of the Goods and/or Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to award Call Off Agreements for the Goods and/or Services from the Supplier by following Framework Schedule 8 (Call Off Procedure).
	2. Call-Off Contracts shall commence on the Service Commencement Date and shall expire on the date specified in the Call-Off Contract.
	3. The Supplier shall comply with the relevant provisions in Framework Schedule 8 (Call Off Procedure).
7. Services
	1. The Supplier shall provide the Services in accordance with this Agreement and as described in Schedule 1. The Services shall be deemed to include all activities, functions and services necessary for the proper provision of, ancillary to or customarily included as part of services similar to the Services.
	2. The Supplier shall ensure that each Call-Off Service conforms to the relevant description set out in the Call-Off Contract and Schedule 1.
8. Supplier’s Obligations
	1. The Supplier shall perform all of its obligations under this Agreement:
		1. in accordance with any PIDs, Project Plans, Process Documents and Security Plans approved by the Department;
		2. in accordance with the Departmental Policies and Procedures and Good Industry Practice;
		3. substantially in accordance with PRINCE2; and
		4. in accordance with the Department’s reasonable instructions, as contained in the Call-Off Contracts.
	2. The Supplier shall comply with all statutory provisions applicable to the provision of the services by the supplier.
9. Department’s Obligations
	1. The Department shall comply with the payment provisions of Schedule 2 provided that the Department has received full and accurate information and documentation as required by Schedule 2 from the Supplier for work completed to the satisfaction of the Department. Payment will be tied to acceptance under clause 34.
10. Departmental Dependencies
	1. The Supplier’s performance of the Services may depend on the Department’s performance of the Departmental Dependencies and the Department’s other obligations under the Agreement. Therefore the Supplier shall not be liable for:
		1. any failure to comply with the Agreement to the extent that such failure is directly caused by a failure by the Department to comply with its obligations under this Agreement or to perform a Departmental Dependency; or
		2. any delay in fulfilling its obligations under the Agreement to the extent that such failure is directly caused by a failure by the Department to comply with its obligations under the Agreement or to perform a Departmental Dependency

(each a “**Department Delay**”)

provided always that such relief shall only be granted if the Supplier: (i) has given a notice to the Department promptly and in any event within 5 Working Days, upon becoming aware of such failure to comply or delay (as applicable); and (ii) uses Best Endeavours in accordance with Good Industry Practice to make good any such failure or make up time lost as a result of that delay (as applicable).

1. Cooperation
	1. The Supplier shall be open and co-operative and provide reasonable assistance to Regulatory Bodies, test development agencies and any third party providing services to the Department (including services similar to or the same as the Services) or any third party to whom the Department subcontracts or delegates any of its rights and obligations under this Agreement, or any other activities it undertakes as part of its business from time to time (each such third party being a “**Departmental Service Provider**”). This assistance shall include:
		1. providing such information about the manner in which the Services are provided as is reasonably necessary for the Departmental Service Providers to provide their services to the Department or carrying out such activities as have been delegated to it by the Department;
		2. making available to, or accepting information from the Departmental Service Providers and Regulatory Bodies; and
		3. meeting the Department, Ofqual and other Regulatory Bodies and the Departmental Service Providers to discuss the Services and the services provided by third parties.
2. Changes to the Department's Requirements
	1. The Department shall notify the Supplier of any material change to the Department's requirement under this Agreement.
	2. The Supplier shall use Best Endeavours to accommodate any changes to the needs and requirements of the Department provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs to be agreed between the Parties in writing.
3. Amendment and variation
	1. No amendment or variation to this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the Parties. The Supplier shall comply with any formal procedures for amending or varying agreements which the Department may have in place from time to time.
4. Change Control Procedures
	1. If either Party wishes to change this Agreement including the modification of an existing Call-Off Contract the provisions set out in Schedule 5 shall apply in respect of that change.
5. Suppliers Employees and Sub-Contractors
	1. Subject to Clause 16.2, the Supplier shall not, without the Department’s prior written consent, subcontract any of its rights and obligations under this Agreement. The Supplier shall maintain full details of its Subcontractors (including the services provided and how they are managed) and shall make such details available to the Department upon request.
	2. The Supplier shall be entitled to subcontract marking services to Markers on the Department’s approved list of Markers without the Department’s prior written consent.
	3. The Department’s consent to a Subcontractor will not relieve the Supplier of its obligations to the Department under this Agreement and the Supplier shall be fully responsible to the Department for the acts or omissions of its Subcontractors. Any obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Subcontractors and Personnel also do, or refrain from doing, such act or thing.
	4. The Supplier shall give the Department on request a list of all persons who are or may be at any time directly concerned with the performance of this Agreement specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the Department may reasonably require.
	5. The Supplier shall immediately notify the Department if they have any concerns regarding the propriety of any of its Subcontractors in respect of the Services.
	6. If the Department notifies the Supplier that it considers that an employee or Subcontractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Agreement, then the Supplier shall, as soon as is reasonably practicable, take all such steps as the Department considers necessary to remedy the situation or, if required by the Department, remove the employee or Subcontractor from providing the Services and shall provide a suitable replacement (at no cost to the Department).
	7. The Supplier shall take all reasonable steps to avoid changes of employees or Subcontractors assigned to and accepted to provide the Services under the Agreement except if changes are unavoidable or temporary. The Supplier shall give at least one month's written notice to the Contract Manager of proposals to change Key Employees or Subcontractors.
	8. The Supplier shall use all reasonable endeavours to ensure that all its employees and Subcontractors who are not EU citizens are legally entitled to be resident in the UK and have a work permit, where applicable.
	9. Where the Supplier enters into a contract with a Subcontractor for the purpose of performing its obligations under the Agreement it shall ensure prompt payment in accordance with this Clause 16.9. Unless otherwise agreed by the Department in writing, the Supplier shall ensure that any contract requiring payment to a Subcontractor shall provide for undisputed sums due to the Subcontractor to be made within:
		1. 10 days, where the Subcontractor is an SME; or
		2. 30 days either, where the Subcontractor is not an SME, or both the Supplier and the Subcontractor are SMEs.
	10. The Supplier shall comply with such terms and shall provide, at the Department’s request, sufficient evidence to demonstrate compliance.
	11. The Department shall be entitled to withhold payment due to the Supplier if, in the Department’s reasonable opinion, the Supplier has failed to comply with its obligations to pay any Subcontractors in accordance with Clause 16.9 and the Department shall not be liable to pay any interest or penalty in withholding such payment. .
	12. The Supplier, its employees and Subcontractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
	13. The Supplier shall ensure the security of all the Property whilst in its possession in accordance with the Department’s security policy.
6. Personnel
	1. The Supplier shall ensure that it provides an adequate number of suitably qualified, skilled and experienced Personnel and shall ensure that they provide the Services with all due care and skill. In particular, all Personnel shall be fluent in English.
	2. The Personnel shall not become employees of the Department and any instruction issued by the Department is issued to the Supplier and not directly to the Personnel.
	3. Except with the Department’s prior written consent, the Supplier shall only use Markers from the Department’s approved list of Markers in the performance of the Services. Without prejudice to Clause 17.3, if the Supplier uses Markers who are not on the Department’s approved list of Markers in the performance of the Services, the Supplier shall ensure that such Markers have been appropriately vetted to confirm that they have qualified teacher status, prior to them commencing work on the Services. The Supplier shall further ensure that any Personnel (other than Markers) have been thoroughly vetted by the Supplier in accordance with the Departmental Security Policy prior to them working on the Services.
	4. The Supplier shall ensure that all Markers are recruited in accordance with the Departmental Policies and Procedures (including the STA National Curriculum Assessments Marker Recruitment Policy).
	5. For each Call-Off Service, the Supplier shall agree in writing with the Department the identities of the senior Markers responsible for ensuring the consistency of marking and/or answering queries from Markers generally (each a “**Lead Marker**”) and their deputies at least 2 months before any marking activities are undertaken in respect of that Call-Off Service. The Department may recommend that the Supplier nominates particular individuals as Lead Markers and the Supplier shall give due regard to such recommendation and shall give the Department reasons for not appointing an individual recommended by the Department. After the identities of the Lead Markers and their deputies have been agreed in respect of a Call-Off Service, the Supplier shall not change the Lead Markers or their deputies without the Department’s prior written approval.
	6. The use by the Supplier of any Markers on the Department’s approved list of Markers or any Markers recommended by the Department (including for a Lead Marker role) shall not relieve the Supplier of responsibility for delivering the Services in accordance with this Agreement.
	7. The Supplier shall, at the Department’s reasonable request from time to time, procure that the Markers perform marking, or attend meetings, at the Departmental Premises as specified in the Call-Off Contract.
	8. The Supplier shall ensure that the Marker Contracts:
		1. are in a form that has been approved by the Department (to the extent such contracts are entered into after the Effective Date;
		2. contain confidentiality and security requirements that, as a minimum, appropriately reflect the confidentiality and security requirements set out in this Agreement;
		3. specify that the Department shall be the Data Controller relating to the Markers and processed in connection with the Services, and include notices describing the purposes for which the Markers’ Personal Data will be processed by the Department and the Departmental Service Providers (including for the purpose of auditing the quality of the tests marking);
		4. the rates of pay offered to the Markers for each Call-Off Service shall be approved by the Department before the Supplier communicates such rates of pay to the Markers. The Supplier shall not amend the terms on which Markers are engaged or the rates at which they are paid, without the Department’s prior written consent.
	9. As at the Effective Date, the Key Employees are:
		1. Contact 1
		2. Contact 2; and
		3. Contact 3

along with any other employees identified as key in a Call-Off Contract (the “**Key Employees**”). The Supplier shall maintain up-to-date CVs of all Key Employees and shall make the CVs available to the Department on request. At the Department’s reasonable request during the Term, the list of Key Employees in this Clause 17.9 shall be amended to include any other Personnel which the Department considers to be Key Employees.

* 1. If any of the Key Employees cease to be involved in the provision of the Services, the Supplier shall promptly nominate another employee of the Supplier to act as a Key Employee in place of that person. Prior to doing so, the Supplier shall:
		1. ensure that the individual has the appropriate ability and qualifications;
		2. notify the Department of its intention to appoint that individual;
		3. introduce the individual to appropriate representatives of the Department; and
		4. provide the Department with such information about the individual as is reasonably requested by the Department.
	2. If the Department reasonably and promptly objects in writing to the individual proposed under Clause 17.10, the Supplier shall not assign that individual to the position and shall propose to the Department another individual of suitable ability and qualifications. If the Department does not object to that individual, then they shall become a Key Employee.
	3. The costs of training any replacement Key Employee or other handover costs shall be borne by the Supplier.
	4. The Supplier shall not, and shall ensure that its Group Companies shall not, at any time during the Term or for 12 months after termination of this Agreement, solicit or endeavour to entice away from or discourage from being employed or hired by the Department any person who is an employee of the Department and who, to the Supplier’s knowledge, is or was engaged in the Services in the previous 12 months whether or not such person would thereby commit a breach of his contract of service and save that this restriction shall not apply to any person who has received a notice of redundancy or dismissal. The restrictions in this Clause 17.13 shall not apply if a person who is or was an employee of the Department is employed as a result of a response by that person to a public advertisement.
1. Personnel Security Standard
	1. The Supplier shall ensure that any Personnel who have unsupervised access to Departmental Assets meet the Personnel Security Standards and shall provide evidence that the checks have been performed on request.
	2. A breach of this Clause 18 shall entitle the Department to terminate the Agreement immediately.
2. Branding of the Service
	1. From the Effective Date the Department grants the Supplier a non-exclusive royalty-free licence to use the Trade Marks during the Term in the Territory on or in relation to the tests or related materials as is necessary for the provision of the Services.
	2. The right to use the Trade Marks is conditional on the Supplier’s compliance with the Department’s Brand Guidelines (as amended by the Department from time to time).
	3. The Supplier shall not affix any trademarks (other than the Trade Marks) or other promotional information to any the Departmental Materials (including tests, Markers’ materials and any marketing materials) without the Department’s prior written consent
	4. The Supplier shall give the Department on request representative samples of any materials, including test materials, Marker’s materials and marketing materials, on or in respect of which the Trade Marks are used.
	5. This Clause 19 and the licence contained herein is personal to the Supplier. The Supplier shall not assign, transfer, sub-license, mortgage, charge, or in any other way dispose of or purport to dispose of its rights or obligations under this Clause 19. Without prejudice to the generality of the foregoing, if the Supplier wishes a third party (a “**Sub-Licensee**”) to use the Trade Marks, the Supplier shall obtain the Department’s prior written consent to such sub-licence, and if consent is given, shall procure that the Sub-Licensee shall enter into a licence directly with the Department containing provisions substantially the same as set out in this Clause 19 prior to the Sub-Licensee using the Trade Marks. The Supplier shall be responsible to the Department for the acts and omissions of its Sub-Licensees as if they were those of the Supplier.
	6. Except as provided by this Clause 19, the Supplier shall not use the Trade Marks or the name of the Department or the Standards and Testing Agency.
3. Step in rights
	1. Without prejudice to DFE’s rights of termination under clause 26 the DFE may exercise one or more of the rights set out in this clause 20 (**“Step In Rights”**) if:
		1. there is a Default by the Supplier which materially prevents or materially delays performance of the Services or any part of the Services;
		2. an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;
		3. a Regulatory Body has advised the Department that exercise by the Department of its rights under this clause 20 is necessary;
		4. a serious risk exists to the health and safety of persons, property or the environment;
		5. it is necessary to discharge a statutory duty; or
		6. the Supplier becomes insolvent.
	2. If the Departmenthas a Step In Right it may serve notice on the Supplier (a **“Step-In Notice”**) that it will take action under this clause 20 either itself or with the assistance of a third party.Third party introduction is subject to completion of a confidentiality agreement.
	3. The Step-In Notice shall set out:
		1. the action the Department wishes to take and in particular the Services that it wishes to control (the **“Required Action”**);
		2. the event triggering the Step In Rights and whether the Department believes that the Required Action is due to the Suppliers Default;
		3. the date on which it wishes to commence the Required Action;
		4. the time period which it believes will be necessary for the Required Action
		5. whether the Department will require access to the Supplier’s premises; and
		6. to the extent practicable, the effect the Department 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.
	4. Following service of a Step-In Notice, the Department shall;
		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.
		2. keep records of the Required Action taken and provide information about the Required Action to the Supplier
		3. co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide those Services of which the Department is not assuming control; and
		4. act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Step In Rights.
	5. For as long as and to the extent that the Required Action continues:
		1. the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
		2. the Department shall pay the Supplier the Charges after subtracting any applicable Service Credits and the Department costs of taking the Required Action. Service credits where applicable will be specified in the ITQ.
	6. If the Contractor demonstrates to the Department’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 Department not taken the Required Action, the Department may adjust the Charges.
	7. Before ceasing to exercise its Step In Rights the Department shall deliver a written notice to the Contractor (a **“Step-Out Notice”**), specifying:
		1. the Required Action it has taken; and
		2. the date on which the Department plans to end the Required Action subject to the Department being satisfied with the Supplier’s ability to resume the provision of the Services and the Supplier’s plan developed in accordance with clause 20.8.
	8. The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the date specified in clause 20.7.2, develop for the Department’s approval a draft plan relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of the Contract.
	9. If the Department does not approve the draft plan, it shall inform the Supplier of its reasons for not approving it and the Supplier shall then revise the draft plan taking those reasons into account and shall re-submit the revised plan to the Department for approval. The Department shall not withhold or delay its approval of the draft plan unreasonably.
	10. The Supplier shall bear its own costs in connection with any Step-In under this clause 20, provided that the Department shall reimburse the Supplier’s reasonable additional expenses incurred directly as a result of any Step-In action taken by the Department under clauses 20.1.2 to 20.1.5 (insofar as the primary cause of the Department serving the Step In Notice is identified as not being the result of a Supplier’s Default).
4. Escrow
	1. At the Department’s request in a Call-Off Contract, the Supplier shall promptly ensure the Source Code for all the Departmental Software is placed in escrow with the Department’s chosen escrow service provider (the “**Escrow Agent**”) at the Department’s cost.
	2. The Supplier shall ensure that all Source Code placed in escrow under this Clause 21 shall be on the Escrow Agent’s standard single licensee terms, with the Department as a licensee, save that the service of a Termination Notice shall be a release event for that Source Code.
	3. The Supplier shall ensure that all Source Code placed into escrow under this Clause 21 is updated whenever there is a material change to that Source Code and, in any event, at least once every 6 months.
	4. At the Department’s request, the Escrow Agent shall verify the software and the Source Code. The Department shall pay the costs of such verification unless the verification determines that the software or the Source Code is incomplete or defective, in which case the Supplier shall: (a) reimburse the Department for the costs of that verification; and (b) ensure the prompt replacement of that material with the correct software and the Source Code that will pass the verification exercise.
5. Intellectual Property Rights
	1. Subject to Clause 22.11, all Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patterns, models, designs or other material which is:
		1. furnished to or made available to the Supplier by or on behalf of the Department;
		2. prepared by or for the Supplier on behalf of the Department for use, or intended use, in relation to the performance by the Supplier of its obligations under the Agreement; or
		3. the result of any work done by the Supplier, the Personnel or any Subcontractor in relation to the provision of the Services (together with Clauses 22.3 and 22.4 the “**IP Materials**”)

shall vest in the Crown and the Supplier shall not and shall ensure that the Personnel shall not, use or disclose any IP Materials without the Department’s written approval save to the extent necessary for performance by the Supplier of its obligations under the Agreement.

22.2 The Supplier hereby assigns to the Department, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clauses 22.1.2 and 22.1.3. This assignment shall take effect on the Effective Date or (in the case of rights arising after the Effective Date) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier shall execute all documents and do all acts as are necessary to execute this assignment.

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

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

22.5 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Supplier shall, during and after the Term, indemnify and keep indemnified the Department and the Crown from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Department or the Crown may suffer or incur as a result of or in connection with any breach of this Clause 22.5, except to the extent that any such claim results directly from:

22.5.1 items or materials based upon designs supplied by the Department; or

22.5.2 the use of data supplied by the Department which is not required to be verified by the Supplier under any provision of the Agreement.

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

22.7 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Department or the Supplier) arising from the performance of the Supplier’s obligations under the Contract (“**Third Party IP Claim**”), provided that the Supplier shall at all times:

22.7.1 consult the Department on all material issues which arise during the conduct of such litigation and negotiations;

22.7.2 take due and proper account of the interests of the Department; and

22.7.3 not settle or compromise any claim without the Department’s approval (not to be unreasonably withheld or delayed).

22.8The Department shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Supplier shall indemnify the Department for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not be required to indemnify the Department under this Clause 22.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in Clauses 22.4.1 or 22.4.2.

22.9 The Department shall not, without the Supplier’s consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

22.10 If any Third Party IP Claim is made or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Department and, at its own expense and subject to the Department’s approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Department under Clause 22.4) use its Best Endeavours to:

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

22.10.2 procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Department

and if the Supplier is unable to comply with Clauses 22.10.1 or 22.10.2 within 20 Working Days of receipt by the Department of the Supplier’s notification the Department may terminate the Agreement immediately by notice to the Supplier.

22.11 Any Intellectual Property Rights that the Supplier owned or developed prior to the Effective Date shall remain vested in the Supplier but the Supplier grants to the Department a royalty-free, non-exclusive licence (without a right to sub-license) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Effective Date and which the Department reasonably requires in order to exercise its rights under, and receive the benefit of, the Agreement (including, without limitation, the Services) for the duration of the call-off.

22.12 The Supplier warrants to the Crown, HMSO and the Department (and to any assignees and licensees of each) that any Works will not infringe in whole or in part any Copyright or like right or any Intellectual Property Right of any other person and shall indemnify Her Majesty and/or Her Majesty's Government against any and all claims, demands, proceedings, expenses and losses, including any of a consequential nature, arising directly or indirectly out of any act of the foregoing in relation to any Work, where such act is or is alleged to be an infringement of a third party's Copyright or like right or other Intellectual Property Right.

22.13 The warranty and indemnity contained in Clause 22.12 shall survive the termination of this Agreement and shall exist for the life of the Copyright.

1. Warranty and Indemnity
	1. The Supplier warrants to the Department that the obligations of the Supplier under this Agreement will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Department to expect in all the circumstances. The Department relies on the Supplier's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Supplier in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Supplier as part of this Agreement. The Supplier warrants that any goods supplied by the Supplier forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.
	2. Without prejudice to any other remedy, in the event of a Defect (as defined in Clause 35.2) the Department may:
		1. require the Supplier promptly to re-perform or replace the relevant part of the Services without additional charge to the Department within a reasonable time period; and
		2. If the supplier fails to remedy the Defect in the prescribed time period in accordance with Clause 23.2.1, reasonably assess the cost of remedying the failure (the “**Assessed Cost**”) and (subject to the Department mitigating such Assessed Costs to the extent reasonably possible) to deduct from any sums due to the Supplier the Assessed Cost for the period that such failure continues. Where the Department seeks to rely on Clause 20 (Step-in) in the event of a Defect, the calculation of the Assessed Costs will be subject to compliance with Clause 20 above and paid in accordance with Clause 20.5.2.
	3. The Supplier shall be liable for and shall indemnify the Department in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Department or otherwise arising out of or in the course of or caused by the provision of the Services.
	4. The Supplier shall be liable for and shall indemnify the Department against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Agreement or otherwise through the default of the Supplier.
	5. All property of the Supplier whilst on the Department's premises shall be there at the risk of the Supplier and the Department shall accept no liability for any loss or damage howsoever occurring to it.
2. Insurance
	1. The Supplier shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Agreement or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Agreement. The Supplier shall on request give the Department a copy of its policies of insurance and evidence that payment of premiums is up to date.
3. Limitations of Liability
	1. Subject to Clauses 25.2 and 25.7 but otherwise notwithstanding any other provision of this Agreement neither Party shall be liable to the other Party for any loss of profits, business, revenue or any indirect or consequential loss.
	2. The provisions of Clause 25.1 shall not limit the Department’s right to recover, where the Supplier and/or its Subcontractors has committed a material breach for:
		1. direct loss of savings or anticipated savings;
		2. any losses, fines, expenses and damages imposed by, or incurred as a result of a ruling made by, a Regulatory Authority, including, but not limited to, such losses, fines, expenses and damages arising from the loss of the Department’s appointment as the body responsible for discharging any functions it is responsible for from time to time under the Education Act 1997;
		3. losses arising from any loss or corruption of data, including the costs of reconstituting any such lost or corrupted data;
		4. any ex gratia payments or gifts made by the Department, costs, claims, demands, expenses and damages of whatsoever nature arising in connection with any claim (or potential claim) made against the Department by schools or pupils or their teachers or parents (including legal costs associated with the defence or settlement of such claim);
		5. costs and expenses associated with the Department implementing its own disaster recovery plans and the implementation of the Business Continuity Plans;
		6. advertising costs or other communications costs (including costs of call-outs or other communications with schools, markers, Local Authorities or pupils, or their parents or teachers) reasonably incurred to limit damage caused to the reputation or integrity of the Department or the tests arising out of a breach of this Agreement by the Supplier; or
		7. any costs or expenses incurred in procuring an alternative service materially similar to the relevant Services.
	3. Subject to Clause 25.7 and to the maximum extent permitted by law, the Department’s aggregate liability, whether in contract, in tort (including negligence), under statute in connection with a Call-Off Contract or the receipt of the relevant Call-Off Services, shall in respect of all liabilities be limited to an amount equal to 20% of the Call-Off Value.
	4. Subject to Clause 25.7 the Supplier’s aggregate liability in connection with a Call-Off Contract shall be limited to an amount equal to 125% of the Call-Off Value.
	5. Subject to Clause 25.7 the Supplier’s liability under Clause 28A shall be limited for each Call-Off Contract to an amount equal to £5,000,000 (five million pounds).
	6. In assessing whether a limit of liability set out in this Clause 25 has been met or exceeded, no account shall be taken of amounts recovered or recoverable in respect of the types of liability or losses referred to in Clause 25.7.
	7. The limits on liability set out in this Clause 25 shall not apply in respect of:
		1. any liability for death or personal injury resulting from a Party’s negligence;
		2. any liability for fraud or fraudulent misrepresentation by a Party;
		3. wilful default by the Supplier; or
		4. any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
4. Termination
	1. The Department may at any time serve a Termination Notice on the Supplier terminating the Agreement or a Call-Off Contract. If the Department serves a Termination Notice under this Clause 26.1:
		1. the Agreement or Call-Off Contract will terminate on the date specified in the Termination Notice; and
		2. In the event that the Department exercises its rights in accordance with clause 26.1, the Department shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with the Contract and which would otherwise represent an unavoidable loss by the Supplier by reason of termination of the Contract or the relevant part if the date of termination is less than 90 days after the date of the Termination Notice.
		3. The Department’s total liability under clause 26.1 shall be limited to the total price of the Supplier Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Supplier at the date of termination.
	2. The Department may at any time serve a Termination Notice on the Supplier terminating all or part of the Agreement (including all or part of a Call-Off Contract or Service Element) if the Supplier commits:
		1. a material Default or a series of Defaults the combination of which is material to its obligations under a Call-Off Contract and (if capable of remedy) the Supplier has failed to remedy the Default(s) within 30 days of receipt of written notice giving particulars of the Default(s) and requiring them to be remedied;
		2. a Default or series of Defaults which results in a Regulatory Authority stating that it shall take action resulting in: (a) the loss of the Department’s appointment as the body responsible for discharging any functions it is responsible for from time to time under the Education Act 1997; or (b) a significant fine; or
		3. a Default or series of Defaults which has a material effect on the reputation of the Department or names under which the Department operates as a result of: (a) publications in national newspapers or websites of national newspapers; or (b) broadcasts on national radio or national television, that are materially factually correct as to the nature of the relevant Default(s) and such disclosure has not been made by a Government department, the Department, its employees, agents and subcontractors in breach of their obligations of confidentiality under this Agreement.
	3. The Department may at any time serve a Termination Notice on the Supplier terminating all or part of the Agreement (including all or part of a Call-Off Contract or Service Element) if:
		1. permitted by Clause 33.5;
		2. there is a Change of Control of the Supplier and:

26.3.2.1 the Supplier fails to inform the Department within 10 Working Days prior to it taking place;

26.3.2.2 a Regulatory Authority objects to the Change of Control; or

* + 1. the Supplier passes a resolution that it be wound-up or that an application be made for an administration order or the Supplier applies to enter into a voluntary arrangement with its creditors;
		2. a receiver, liquidator, administrator, supervisor or administrative receiver is appointed in respect of the Supplier's property, assets or any part thereof;
		3. a court orders that the Supplier is wound-up or a receiver of all or any part of the Supplier's assets be appointed;
		4. the Supplier is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;
		5. there is a change in the legal or beneficial ownership of 50% or more of the Supplier's share capital issued at the Effective Date unless the Supplier has previously notified the Department in writing. For the purpose of this Clause 26.3.5 “control” means the power of a person to secure that the affairs of the Supplier are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power;
		6. the Supplier is convicted (or being a company, any officers or representatives of the Supplier are convicted) of a criminal offence related to the business or professional conduct;
		7. the Supplier commits (or being a company, any officers or representatives of the Supplier commit) an act of grave misconduct in the course of the business;
		8. the Supplier fails (or being a company, any officers or representatives of the Supplier fail) to fulfil its obligations relating to the payment of Social Security contributions;
		9. the Supplier fails (or being a company, any officers or representatives of the Supplier fail) to fulfil its obligations relating to payment of taxes; or
		10. the Supplier fails (or being a company, any officers or representatives of the Supplier fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Agreement.
	1. Nothing in this Clause 26 shall affect any provision of this Agreement which is expressly or by implication intended to come into force or continue in force upon termination of this Agreement.
	2. The Department shall pay the Supplier for all Call-Off Services accepted up to the date of termination and future costs committed to, provided that the Supplier shall use its Best Endeavours to mitigate such costs.
	3. The Supplier may serve on the Department a Termination Notice to terminate the Agreement if the Department fails to pay an undisputed invoice and such invoice remains unpaid 60 days after receipt by the Department of a written notice requiring the Department to pay such invoice and stating the Supplier’s intention to terminate the Agreement (such notice to be delivered after the due date for payment of the invoice). If the Supplier serves a Termination Notice under this Clause 26.6, the Agreement shall terminate 3 months after the notice is served.
	4. Termination or expiry of this Agreement shall not cause any Call-Off Contracts to terminate automatically. All Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the terms of this Agreement.
	5. Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations of the Parties accrued under the Agreement prior to its termination or expiry.
1. Force Majeure
	1. Neither Party shall be liable to the other for failure to comply with the Agreement to the extent caused by any Force Majeure Event subject to the Party being unable to comply with this Agreement (the “**Affected Party**”):
		1. giving written notice to the other Party (the “**Other Party**”) as soon as reasonably practicable on becoming aware of the Force Majeure Event, such notice to contain the following information:
			1. details of the Force Majeure Event that has occurred;
			2. the date from which the event has prevented or hindered the Affected Party in the performance of its duties hereunder;
			3. the duties hereunder so affected; and
			4. its best estimate of the date upon which it will be able to resume performance of the affected duties hereunder;
		2. continuing at all times to take such steps in accordance with Good Industry Practice to resume full performance of its obligations under this Agreement;
		3. providing at reasonable intervals updated information to the Other Party on the status of the Force Majeure Event and the steps taken to resume full performance of its obligations; and
		4. using Best Endeavours to mitigate the consequences of the Force Majeure Event

and the relief from liability under this Clause 27 shall last for the duration of the Force Majeure Event only.

* 1. Notwithstanding anything to the contrary in this Agreement, to the extent that the provision of the Services is prevented or materially affected by a Force Majeure Event, the Department’s obligation to pay the Charges shall be reduced accordingly by an equitable amount (which in the case of total suspension of the Services would be an amount equal to the total Charges for the period of suspension).
	2. If the Supplier is excused under this Clause 27 from the performance of any material obligation under this Agreement for a continuous period of 10 Working Days, then The Department may at any time thereafter, and provided performance or punctual performance by the Supplier is still excused, serve a Termination Notice in respect of all or part of the affected Call-Off Contracts.
1. Preparation for and Consequences of Termination
	1. If it is not commercially sensitive or in breach of Data Protection Legislation the Supplier shall give the Department on request the following up to-date information in a form that can be readily accessed by the Department or a Successor Operator and shall identify which of the following items the Supplier anticipates will transfer to the Successor Operator:
		1. details of all material assets used in the provision of the Services;
		2. details of all material agreements used in the provision of the Services;
		3. details of all the Departmental Data used in the provision of the Services
		4. details of any on-going projects or other work carried out pursuant to this Agreement
	2. In connection with any expiry or termination of this Agreement or any Call-Off Contract for whatever reason:
		1. the Supplier shall provide the Department with a formal project closure report (the “**Project Closure Report**”). The Project Closure Report shall cover all aspects of the delivery of the relevant Call-Off Service and shall include an action plan detailing how any follow on actions should be applied for the benefit of future test cycles;
		2. at the Department’s cost, the Supplier shall provide the Department and any Successor Operator with any assistance necessary for: (i) the transfer of the Services from the Supplier to the Department or any Successor Operator with the minimum of disruption and so as to prevent or mitigate any inconvenience to the Department; and (ii) the Department to understand the outcome of any Services (including the outcome of any trials or any Project Closure Report) and satisfy itself that all relevant materials have been handed to the Department or destroyed, as appropriate; and
		3. the Supplier shall promptly give the Department (or at the Department’s request destroy) all copies of the Departmental Data, the Departmental Materials and the Departmental Software in the Supplier’s control or possession.
	3. Without prejudice to Clause 28.2, within 28 days of receiving a Termination Notice or confirmation from the Department that all Services in relation to a Call-Off Contract have been completed, the Supplier shall seek the Department’s confirmation as to whether the Department requires the Supplier to destroy all or part of any pupil data received or processed by it in connection with the relevant Call-Off Services (the “**Specified Data**”). After the Department’s confirmation or instruction that the Department requires all or part of the Specified Data to be destroyed, the Supplier shall promptly ensure that the relevant Specified Data and any copies or reproductions of that Specified Data are erased or destroyed from any memory device or medium by a secure method so that the data is unrecoverable. The Supplier shall, upon request, provide to the Department written confirmation that all the provisions of this Clause 28.3 have been fully complied with.
	4. Within 3 months of the Effective date, the Supplier shall prepare an Exit Management Plan in the form set out in Schedule 7 for the approval of the Department.

**28A Confidentiality**

28A.1 Subject to Clause 28A.7, the Supplier shall, and shall procure that its Group Companies, shall, treat as strictly confidential and not disclose or use any information received or obtained in connection with this Agreement or any Call-Off Contract which relates to the negotiation or provisions of this Agreement and any agreement entered into pursuant to this Agreement, or the Services (or any information supplied as part of the provision or receipt of the Services).

28A.2 The Supplier shall ensure that its Personnel, professional advisors and consultants are aware of the Supplier’s confidentiality obligations under this Agreement.

28A.3 The provisions of Clause 28A.1 shall not prohibit disclosure or use of information if and to the extent:

28A.3.1 that use or disclosure is required for the provision of the Services;

28A.3.2 required by Regulation or any competent Regulatory Authority or for the purpose of any judicial proceedings arising in connection with this Agreement (including any disclosure permitted by FOIA);

28A.3.3 made to or used by the Supplier’s professional advisers, provided that such professional advisers undertake to comply with the provisions of Clause 28A.7 in respect of such information as if they were a party to this Agreement;

28A.3.4 it becomes publicly available (other than as a result of a breach of an obligation of confidentiality);

28A.3.5 the Department has given prior written consent to the disclosure or use; or

28A.3.6 the information is already in the possession of the Supplier and is not subject to an obligation of confidentiality or a restriction on use

provided that, except where prohibited by any applicable law or regulation, prior to disclosure of any information pursuant to Clause 28A.7, the Supplier shall give sufficient notice to the Department of such requirement so that the Department has reasonable opportunity to contest such disclosure and/or agree the timing and content of such disclosure.

28A.4 Nothing in this Agreement shall prevent the Department from disclosing the Supplier’s Confidential Information:

28A.4.1 to any Crown Body or any other Contracting Department. All Crown Bodies or Contracting Department’s receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Department;

28A.4.2 to any consultant, contractor or other person engaged by the Department;

28A.4.3 for the purpose of the examination and certification of the Department's accounts; or

28A.4.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Department has used its resources.

28A.5 The Department shall use reasonable endeavours to ensure that any Government department, Contracting Department, employee, third party or Subcontractor to whom the Supplier’s Confidential Information is disclosed pursuant to Clause 28A is made aware of the Department's obligations of confidentiality.

28A.6 Nothing in this Clause 28A shall prevent either Party from using any techniques, ideas or Know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of its Intellectual Property Rights.

28A.7 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Department shall determine in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

28A.8 Subject to Clause 28A.7, the Supplier hereby consents to the Department publishing the Agreement in its entirety, including from time to time agreed changes to the Agreement, to the general public.

28A.9 The Department may consult the Supplier to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.

1. Freedom of Information
	1. The Supplier acknowledges that the Department is subject to the FOIA and the EIR.
	2. The Supplier shall and shall procure that its Subcontractors shall:
		1. transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt;
		2. give the Department a copy of all Information in its possession or control in the form that the Department requires within 5 Working Days (or such other period as the Department may specify) of the Department's request;
		3. provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to comply with its obligations under the FOIA and EIR; and
		4. not respond directly to a Request for Information unless expressly authorised to do so by the Department.
	3. The Department shall determine in its absolute discretion and notwithstanding any other provision in the Agreement or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
2. Data Protection Legislation
	1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Departmentis the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is detailed in individual Call-offs by the Department and may not be determined by the Supplier.
	2. The Supplier shall notify the Department immediately if it considers that any of the Supplier’s instructions infringe the Data Protection Legislation.
	3. The Supplier shall provide all reasonable assistance to the Department in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Department, include:
		1. a systematic description of the envisaged processing operations and the purpose of the processing;
		2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
		3. an assessment of the risks to the rights and freedoms of Data Subjects; and
		4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
	4. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement.
		1. Process that Personal Data only in accordance with individual Call-offs, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Department before processing the Personal Data unless prohibited by Law;
		2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Supplier as appropriate to protect against a Data Loss Event having taken account of the:
			1. nature of the data to be protected;
			2. harm that might result from a Data Loss Event
			3. state of technological development; and
			4. cost of implementing any measures;
		3. ensure that :
			1. the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in individual Call-offs);
			2. it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and that they:
			3. are aware of and comply with the Supplier’s duties under this clause;
			4. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
			5. 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 Department or as otherwise permitted by this Agreement; and
			6. have undergone adequate training in the use, care, protection and handling of Personal Data; and
			7. not transfer Personal Data outside of the EU unless the prior written consent of the Department has been obtained and the following conditions are fulfilled:
			8. the Department or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Supplier;
			9. the Data Subject has enforceable rights and effective legal remedies;
			10. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Department in meeting its obligations); and
			11. the Supplier complies with any reasonable instructions notified to it in advance by the Department with respect to the processing of the Personal Data;
			12. at the written direction of the Department; delete or return Persnal Data (and any copies of it) to the Supplier on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
	5. Subject to Clause 30.4, the Supplier shall notify the Department immediately if it:
		1. Receives a Data Subject Access Request (or purported Data Subject Access Request);
		2. Receives a request to rectify, block or erase any Personal Data;
		3. Receives any other request, complaint or communication relating to either Party’s obligations under the Data Protection Legislation;
		4. Receives any communication from the Information Commissioner or any other regulatory authority in connection Personal Data processed under this Agreement;
		5. Receives a request from any Third Party for disclosure or Personal Data where compliance with such request is required or purported to be required by Law; or
		6. Becomes aware of a Data Loss Event.
	6. The Supplier’s obligation to notify under Clause 30.5 shall include the provision of further information to the Department in phases, as details become available.
	7. Taking into account the nature of the processing, the Supplier shall provide the Department with full assistance in relation to either Party’s obligations under Data Protection Legislation and any complaint, communication or request made under Clause 30.5 (and insofar as possible within the timescales reasonably required by the Department) including by promptly providing:
		1. the Department with full details and copies of the complaint, communication or request;
		2. such assistance as is reasonably requested by the Department to enable the Department to comply with a Data Subject Access Request within the relevant Timescales set out in the Data Protection Legislation;
		3. the Department, at its request, with any Personal Data it holds in relation to a Data Subject;
		4. assistance as requested by the Department following any Data Loss Event;
		5. assistance as requested by the Department with respect to any request from the Information Commissioner’s Office.
	8. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
		* 1. The Supplier determines that the processing is not occasional;
			2. The Supplier 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
			3. The Supplier determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
	9. The Supplier shall allow for audits of its Data Processing activity by the Department orthe Supplier’s designated auditor.
	10. The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
	11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
		1. Notify the Department in writing of the intended Sub-processor and processing;
		2. Obtain the written consent of the Department;
		3. Enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
		4. Provide the Department with such information regarding the Sub-processor as the Supplier may reasonably require.
	12. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
	13. The Supplier may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
	14. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Customer may on not less than 30 Working Days’ notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
3. Audit and Documents
	1. The Supplier must keep such documents as are reasonably necessary to enable the Department to comply with its obligations under the Regulations and other documents in accordance with Good Industry Practice which are sufficient to enable the Department to have a complete and accurate understanding of the Supplier’s performance of its obligations under this Agreement (the “**Documents**”). The Supplier must retain the Documents and the means to access and view the Documents, for the minimum period required by law, or 7 years, whichever is the greater.
	2. The Supplier shall permit, and shall ensure that its Subcontractors permit, an auditor (which may be the Department or its designated representative (the “**Auditor**”) to audit it and/or its Subcontractors:
		1. up to twice in any calendar year to carry out a financial, quality and/or value for money audit but not more than once in any 6 month period; and
		2. at any time if the Department has reasonable concerns about the provision of the Services.
	3. Without prejudice to the generality of Clause 31.2, the Supplier shall ensure that the Department is entitled to carry out an audit of the Markers (no more thanonceduring any Call-Off Contract term), on not less than 20 Working Days’ notice, to ensure that tests are marked in accordance with the Departmental Policies and Procedures. The Supplier shall, and shall use Best Endeavours to procure that the Markers shall, provide the Department with all reasonable assistance and co-operation in connection with any such audit, including:
		1. details of Markers’ names, addresses, qualifications, seniority, ratings, experience and references;
		2. copies of the Marker Contracts;
		3. samples of tests marked by named Markers;
		4. interviews with individual Markers.
	4. The Department shall (except where the purpose of the audit would be frustrated by doing so or where a Regulatory Authority or Regulations prohibit the Department from doing so) use reasonable endeavours to: give the Supplier 20 Working Days’ notice of when the audit shall be conducted and arrange for audits to take place during the Marker Period, except that the Department shall not be required to give the Supplier any prior notice of any audit which has as its main purpose the verification of the Supplier’s compliance with its obligations under Clauses 37 or 26 or if the Department reasonably believes that the Supplier is in material breach of the Agreement.
	5. The Supplier shall ensure that it and its Subcontractors provide all reasonable assistance to, and co-operate with, the Auditor, including providing access to the Documents and any other relevant information.
	6. Each Party shall bear its own costs of any of the audits set out in Clause 31.2, except if the Auditor finds that the Supplier has acted in material breach of this Agreement or where the Supplier has failed to comply with its obligations under Clause 31.5, in which case the Supplier shall bear all costs of the audit.
	7. If, as the result of any audit, it is found that the Supplier has overcharged the Department, the Supplier shall immediately pay to the Department a sum equal to the amount overcharged by electronic bank transfer and interest accrued on such overcharged amounts at a rate equal to the interest rate of 1% over the Bank of England base rate from time to time.
	8. The Supplier shall attend any meetings requested by a Regulatory Authority. The Supplier shall, and shall procure that its Subcontractors shall: (i) permit any Regulatory Authority or its designated representatives access to their facilities to audit their provision of the Services and provide such information and assistance as the Regulatory Authority may require; and (ii) provide the Department with a copy of the results of any report relating to any inspection visit by the Regulatory Authority.
	9. If the Department wishes to conduct audits additional to those set out in this Clause 31, the Department may do so and the Supplier shall be entitled to make a reasonable additional charge in respect of any costs incurred in complying or assisting with such audit.
4. Tax Indemnity
	1. Where the Supplier is liable to be taxed in the UK in respect of consideration received under this Agreement, 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.
	2. Where the Supplier is liable to NICs in respect of consideration received under this Agreement, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
	3. The Department may, at any time during the term of this Agreement, ask the Supplier to provide information which demonstrates how the Supplier complies with Clauses 32.1 and 32.2 or why those Clauses do not apply to it.
	4. A request under Clause 32.3 may specify the information which the Supplier must provide and the period within which that information must be provided.
	5. The Department may terminate this Agreement if-
		1. in the case of a request mentioned in Clause 32.3 if the Supplier:
			1. fails to provide information in response to the request within a reasonable time, or
			2. provides information which is inadequate to demonstrate either how the Supplier complies with Clauses 32.1 and 32.2 or why those Clauses do not apply to it;
		2. in the case of a request mentioned in Clause 32.4, the Supplier fails to provide the specified information within the specified period, or
		3. it receives information which demonstrates that, at any time when Clauses 32.1 and 32.2 apply, the Supplier is not complying with those Clauses.
	6. The Department may supply any information which it receives under Clause 32.3 to HMRC for the purpose of the collection and management of revenue for which they are responsible.
	7. The Supplier warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and NICs which may be found due from it in relation to any payments or arrangements made under this Agreement or in relation to any payments made by the Supplier to its officers or employees in connection with this Agreement.
	8. The Supplier will account to the appropriate authorities for any income tax, NICs, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Supplier under this Agreement or in relation to any payments made by the Supplier to its officers or employees in connection with this Agreement.
	9. The Supplier shall indemnify Department against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the parties of their obligations under this Agreement (other than in respect of employer's secondary NICs) and any costs, expenses, penalty fine or interest incurred or payable by Department in connection with any such assessment or claim.
	10. The Supplier authorises the Department to provide the 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 this Agreement whether or not Department is obliged as a matter of law to comply with such request.
5. Mobilisation and Implementation
	1. Within 5 Working Days of any Service Commencement Date, the Supplier shall meet the Department to demonstrate the readiness and appropriateness of plans, processes, systems, resourcing and any other factors required to enable the reliable completion of the relevant Call-Off Service.
	2. At least 15 Working Days prior to the relevant Service Commencement Date, the Supplier shall, in respect of each Call-Off Contract, deliver to the Department:
		1. a PID which, as a minimum:
			1. covers the following topics: risk management process/risk register, an issues log, a change control register, communication plan, quality plan and log, product descriptions (as appropriate), exception reports and lessons learnt log; and
			2. otherwise meets the Department’s reasonable requirements
		2. a Project Plan; and
		3. a Process Document which, without prejudice to Clause 33.2.2, shall substantially comply with the methodologies of PRINCE2 or equivalent.
	3. The Supplier shall not propose any amendments to the Milestone Dates for any Key Milestones unless there is good cause in order to protect the quality or any other aspect of the Services or to rectify a delay caused directly or indirectly by the Department. In any event, the Department shall be entitled to reject any amendments to the Milestone Dates proposed by the Supplier (whether as part of the Project Plan or otherwise) in its sole discretion, in which case the Milestone Dates set out in the relevant Call-Off Contract shall apply.
	4. The Department shall, within 5Working Days of receiving all of the documentation referred to in Clause 33.2 above, notify the Supplier of the results of the Department’s review of the same. Following the Department notifying the Supplier of the results of the Department’s review, the Supplier shall within 2 Working Days amend the PID, the Project Plan and the Process Document in accordance with any reasonable recommendations made by the Department and shall resubmit the PID, the Project Plan and the Process Document to the Department for the Department’s approval. The Supplier shall continue to amend and resubmit and the Department shall continue to review the PID, the Project Plan and the Process Document in accordance with this Clause 33.3 until the Department has approved such documents.
	5. If the PID, the Project Plan and the Process Document have not been approved in accordance with Clause 33.3 by the Longstop Date, then the Department shall be entitled to serve a Termination Notice to effect immediate termination of the relevant Call-Off Contract. For the purposes of this Clause 33.5, “**Longstop Date**” shall mean the date falling 3 Working Days prior to the relevant Service Commencement Date plus any period of Department Delay.
	6. The Supplier shall keep the PID, the Project Plan and the Process Document up-to-date throughout the Call-Off Contract term and shall provide updates in connection with their contents to the Department on a weekly basis during the Call-Off Contract term or as otherwise reasonably required by the Department. The Supplier shall not be entitled to change Milestone Dates, Service standards or descriptions or any other matters that may affect the Department’s rights and remedies (or the Supplier’s obligations) through its updates of the documents referred to in this Clause 33.
	7. The Supplier shall ensure at all times the Supplier System has adequate capability, capacity and availability for all the processing and other functions necessary for performance of the Services in accordance with the Agreement, including compliance with the Regulations. The Supplier shall maintain, at its own cost, all required authorisations and licences in respect of the Supplier System.
	8. The Supplier shall ensure that all of the Milestones are completed by their Milestone Dates. If at any time the Supplier is aware that any of the Milestones will not or are unlikely to be completed by their Milestone Dates, it shall:
		1. inform the Department of the reasons for not meeting that Milestone Date;
		2. inform the Department of the consequences of not meeting the Milestone Date (including any impact on the likelihood of other Milestones being completed by their Milestone Dates);
		3. inform the Department of the steps it will take to mitigate against the consequences of not meeting the Milestone Date; and
		4. provide all additional resources necessary to ensure that the Milestone is completed as soon as reasonably practical.
	9. The Supplier shall monitor progress towards the Milestones against the Milestone Dates in order to identify as soon as reasonably practicable whether a Milestone is unlikely to be completed by the relevant Milestone Date.
	10. During the Exit Phase, the Supplier shall perform its obligations set out in the Exit Management Plan in accordance with Clause 28.
6. Acceptance Testing
	1. When the Supplier believes that it has completed any Service Element for which it proposes to invoice, it shall inform the Department and, at the same time, provide the Department and any Departmental Service Provider nominated by the Department with all assistance and information reasonably required to assess whether or not the relevant Service Element has been successfully completed.
	2. If the Department considers that the relevant Service Element has been successfully completed in accordance with the terms of this Agreement, it shall inform the Supplier (“**Acceptance**”). Acceptance shall be without prejudice to the Department’s rights or remedies under this Agreement and, without limitation, the failure to identify a failure in a Service Element under this Clause 34 shall not preclude the Department from requiring the Service Element to be fully completed at a later stage so that it complies with the requirements for such Service Element under the Agreement.
	3. If the Department does not believe that the relevant Service Element has been successfully completed in accordance with the terms of this Agreement, it shall inform the Supplier. On receipt of such information, the Supplier shall, at its own cost, complete the relevant Service Elementas soon as possible and shall re-submit the Service Element for further testing in accordance with Clause 34.1. This process shall be repeated until Acceptance. Service Elements will be outlined in the ITT and acceptance will be based on the agreed deliverables.
7. Failures
	1. The Supplier shall promptly warn the Department if it has reasonable grounds to believe that any development (including failure on the part of the Supplier to carry out its obligations and responsibilities under this Agreement) will have, or threatens to have, a detrimental effect on all or part of the Services. At the Department’s request, the Supplier shall take all reasonable steps to prevent such development from occurring and to prevent its reoccurrence.
	2. If the Supplier fails to perform the Services in accordance with this Agreement to the extent that the failure is directly caused by the Supplier and/or its Subcontractors (a “**Defect**”) then, without prejudice to any other rights or remedies it may have under this Agreement or otherwise, the Department may require the Supplier by notice in writing, at the Supplier’s own expense, to remedy any Defect or to re-perform any Service affected by the Defect within a reasonable time specified in the notice. If the Supplier fails to remedy a Defect within the time specified, the Department may, or may instruct a third party to, remedy that Defect, the reasonable costs of which shall be borne by the Supplier.
	3. If the Supplier fails to perform the Services in accordance with this Agreement, then without prejudice to any other rights or remedies it may have under this Agreement or otherwise, the Department may require the Supplier by notice in writing to carry out an investigation into the cause of such failure. The Supplier shall carry out such an investigation in accordance with Good Industry Practice, promptly and at its own cost and shall provide a complete and accurate report of that investigation to the Department.
	4. The obligations in this Clause 35 are without prejudice to any other obligations of the Supplier or rights of the Department whether under this Agreement or otherwise.
8. Charges
	1. The Supplier shall invoice the Department for Charges in accordance with the agreed pricing detailed in each Call-Off Contract.
	2. All correctly calculated Charges properly invoiced by the Supplier in accordance with this Agreement shall be paid by the Department within 30 days of receipt except for any amount in respect of which the Department wishes to raise a genuine dispute.
	3. All costs and expenses must be invoiced by the Supplier as part of the Charges within 6 months of the date the Supplier is first entitled to invoice such sums against the payment milestones specified in the Call-Off Contract. The Supplier irrevocably waives the right to payment of any sums not invoiced within this period.
	4. The Supplier shall between 1 January and 31 January in each calendar year, inform the Department, in writing, of any charges, costs and expenses:
		1. due under this Agreement which are still eligible to be invoiced under Clause 36.3, but which have not yet been invoiced; and
		2. that are expected to become due under the Agreement prior to 31 March in the same calendar year.
	5. If either Party has not paid any sums payable by their due date, all sums will accrue interest at a rate equal to the interest rate of 1% over the Bank of England base rate from time to time and this shall constitute a substantial remedy for late payment.
	6. The Department may retain and set off any amount owed to it by the Supplier under this Agreement against any amount due to the supplier under this agreement.
9. Security
	1. The Parties shall comply with the provisions of Schedule 10 in addition to this Clause 37.
	2. Within 10 Working Days after the Effective Date, the Supplier shall deliver to the Department for the Department’s review a security plan that is compliant with the principles of the SPF (the “**Security Plan**”). The Supplier shall ensure that the Security Plan incorporates proposed security mechanisms for all data transfers, as well as detailed security policies, standards and controls and covers all aspects of the Services (including physical security, infrastructure, platforms, transportation of sensitive material, applications and services and interfaces). Following the Department notifying the Supplier of the results of this review, the Supplier shall within 5 Working Days amend the Security Policy and accordance with any recommendations made by the Department and shall resubmit the Security Plan to the Department for the Department’s approval. The Supplier shall continue to amend and resubmit the Security Plan in accordance with this Clause until the Department has approved such plan. The Supplier shall ensure that the delivery of any Call-Off Services does not commence until the Department has approved the Security Plan in accordance with this Clause. The Supplier shall comply with the Security Plan approved by the Department at all times during any Call-Off Contract term.
	3. The Supplier shall work with the Department to identify any materials or information assets that the Supplier and/or any Subcontractors may have access to and that may be classified as BIL1, BIL2 or BIL3 (as such terms are defined in the SPF). The Department shall determine the relevant BIL classification for any materials and information assets in its sole discretion and the Supplier shall treat and secure such information accordingly (including in accordance with the SPF).
	4. The Supplier shall ensure that the following precautions are in place when transporting sensitive materials (including between the Supplier's premises, and to administrators and Markers):
		1. the use of tamper-proof and clearly-labelled packaging;
		2. the use of only transport suppliers and/or couriers which (as a minimum) provide appropriate levels of security protection, track and trace and GPS tracking;
		3. the requirement for an approval from the Security Manager, or appropriate delegated representative, prior to any release of material for transport, and ensuring the Department’s relevant Relationship Manager is informed of the transport’s time of departure, proposed route and time of arrival at destination;
		4. for bulk movement of materials, the use of rigid-sided vehicles;
		5. not leaving vehicles unattended at any time and informing the Department’s relevant Relationship Manager of any unexpected delay;
		6. ensuring deliveries are completed during a driver's allocated hours where possible and that the relevant vehicle is securely parked;
		7. when using a courier network for packages, ensuring a track and trace system is used for each package or consignment;
		8. ensuring a scan tracks the package or consignment at each transfer point in the network through to final proof of delivery; and
		9. notifying the Department within 3 business hours of becoming aware of any actual or suspected securityissue or loss or breach of the terms of this Clause 37.
	5. At least 5 Working Days prior to the relevant Service Commencement Date, the Supplier shall confirm in writing to the Department that all Personnel who have access to the Services, or secure materials or data related to the Services are vetted to a level necessary and appropriate for the BIL of the material. The Supplier shall ensure that any Personnel with access to pupil level data (excluding Markers that have been confirmed as holding qualified teacher status) have had a Criminal Records Bureau check performed on them within the last 3 years and that such check has not flagged potential concerns around that Personnel’s suitability to access pupil level data.
	6. Without prejudice to any other rights and remedies of the Department, any breach of this Clause 37 by the Supplier that results in either a significant adverse effect on the reputation of the Department or on the reputation or integrity of the tests shall be a material breach of this Agreement.
10. Disaster Recovery and Business Continuity
	1. The Supplier shall have in place a business continuity management system that is compliant with HMG standards https://www.gov.uk/government/collections/government-security and the SPF that has been approved by the Department within 4 months of the Effective Date.
	2. The Supplier undertakes that it has and shall continue to have in place up-to-date disaster recovery plans and business continuity plans (“**Business Continuity Plans**”):
		1. in accordance with the minimum standards prescribed from time to time by any Regulatory Authority;
		2. that are aligned with the Department’s disaster recovery and business continuity plans to the extent that such plans have been notified to the Supplier and to the extent that they relate to the Services, events that could affect the Services or failures in the Services; and
		3. without limiting the generality of the foregoing, in accordance with Good Industry Practice.
	3. Within 4 months of the Effective Date, the Supplier shall provide the Department with a copy of the Business Continuity Plans for its review. Following the Department notifying the Supplier of the results of this review, the Supplier shall within 5 Working Days amend the Business Continuity Plans in accordance with any recommendations made by the Department and shall resubmit the Business Continuity Plans to the Department for the Department’s approval. The Supplier shall continue to amend and resubmit the Business Continuity Plans in accordance with this Clause 13.3 until the Department has approved such plans.
	4. The Supplier shall test the Business Continuity Plans to ensure their effectiveness:
		1. at least once per year following the Effective Date; or
		2. when the Department requests such a test on not less than 5 Working Days’ notice in writing.
	5. the Department shall be invited to participate in and attend such tests and shall be given all information and cooperation as may be reasonably requested in order to enable it to monitor such tests, including access to premises, locations and systems from which the Services are provided (or from which the Services will be provided in the event of a disaster), the results of any such testing and details of the steps taken to remedy any shortcomings or failings in the Business Continuity Plans identified as part of such testing. The Supplier shall provide the results of any test undertaken in accordance with this Clause 38 to the Department within 5 Working Days of such test having been completed.
	6. The Supplier shall provide a copy of the then current Business Continuity Plans to the Department on request from time to time.
	7. If a disaster or any event envisaged in the Business Continuity Plan occur, the Supplier shall promptly notify the Department and implement the Business Continuity Plan as expeditiously as possible in the circumstances. In doing so, the Supplier shall not treat the Department any less favourably than any other customer of the Supplier.
	8. Without prejudice to the Supplier’s obligations under Clauses 29 and 30, the Supplier shall ensure that at least 2 back-up copies of the Departmental Data are made daily and held securely. The Supplier shall also ensure that at least one of the 2 copies of the Departmental Data is kept in a separate secure offsite physical location to the primary copy of the Departmental Data.
	9. The Supplier shall ensure that an appropriate media rotation procedure is followed, in line with ISO/IEC 27001 and Government security policies.
	10. The Supplier shall restore or recreate any the Departmental Data that has been lost, corrupted or destroyed as a result of any Default by the Supplier. Such restoration or recreation shall be carried out promptly and at the Supplier’s own cost. This right of the Department is in addition, and shall be without prejudice, to any other right or remedy of the Department under this Agreement or otherwise.
11. Governance, Service Management and Reports
	1. During the Term, the Supplier shall meet with the Department, upon the Department’s reasonable request, to discuss the Supplier’s capability to perform any of the Services (irrespective of whether or not the Supplier and the Department have executed any Call-Off Contracts) and the Parties shall discuss any strategic issues at such meetings which the Department may raise at or in advance of the meetings.
	2. During any Call-Off Contract term, the Supplier shall report on a weekly basis to the Department (including, at the Department’s option by attending meetings with the Department) on its progress in completing the Service Elements, including: completion of, or failure to complete, any Milestones; an overview of the work completed to date and the work currently being performed; estimated time to complete the Milestones; and details of any significant risks or challenges faced by the Supplier, together with details of the measures taken to mitigate or remedy those risks or challenges.
	3. 24 hours in advance of any meetings held pursuant to Clause 39.2, the Supplier shall provide to the Department the Supplier’s report on its progress in completing the Service Elements, as set out in Clause 39.2.
	4. The Supplier shall take steps in accordance with Good Industry Practice to ensure that all transactions, data access and processing carried out in connection with the Services can be securely traced to an individual or organisation through a secure audit trail.
	5. Within 5 Working Days of the start of each month during a Call-Off Contract term, the Supplier shall provide the Department with information about the current status of the Services, performance against the Project Plans and the Management Information for the previous month. The Supplier shall ensure that the content of the Management Information provided is adequate for the purpose for which the relevant Management Information is required, up-to-date and accurate. The Supplier shall also provide the Department with any additional information reasonably requested by the Department in order to assess the performance or progress of the Services from time to time.
	6. In respect of each Call-Off Contract, the Supplier shall maintain and keep up-to-date throughout any Call-Off Contract term in accordance with PRINCE2 principles a risk log (the “**Risk Log**”), which includes details of the risks, which may affect the Call-Off Service and any significant changes in process. The Supplier shall provide such Risk Log to the Department each week.
	7. The principal point of contact between the Parties in relation to issues arising out of this Agreement, any Call-Off Contract or the performance of the Services will be the relevant Relationship Managers. Either Party may change the identity of its Relationship Managers at any time by written notice to the other.
	8. The Supplier shall from time to time:
		1. provide oral or written reports to the Department and liaise with the Department on the progress and management of the Services as and when reasonably required by the Department;
		2. provide to the Department any information, reports or assistance requested by Ofqual in the exercise of its powers under the Regulations, in an open and co-operative manner and in accordance with any timing and format requirements set by Ofqual; and
		3. attend and report to meetings with the Department and its nominees (which may include Ofqual) to discuss any aspect of the Services as and when reasonably required by the Department.
12. Complaints
	1. The Supplier shall deal with and be responsible for resolving complaints from schools, the Department and other stakeholders, except in cases where the Department has notified the Supplier otherwise. In any event, the Supplier shall handle complaints in accordance with the Department’s reasonable instructions from time to time.
	2. The Supplier shall promptly inform the Department in writing on receipt of a serious (at the Suppliers reasonable discretion) complaint from a school or another stakeholder (not being the Department or a Supplier stakeholder) relating to the Services or the Supplier, together with details of the complaint, the relevant surrounding circumstances and the Supplier’s proposed resolution of the complaint.
	3. Without prejudice to the importance of its obligations under this Agreement, the Supplier acknowledges that the courteous, efficient and effective handling of complaints from schools is an important part of the Service and that the Supplier’s failure to handle such complaints courteously, efficiently and effectively may adversely affect the Department’s reputation and the reputation of the tests.
13. Regulations
	1. Save where the Department determines that a Regulatory Change is not required in accordance with Clause 41.7 (and then only to the extent of that Regulatory Change), the Supplier shall comply, and shall ensure that its Subcontractors and Personnel comply, with all Regulations and Government standards (including the e-government interoperability framework) at all times when performing the Services, insofar as such Regulations and Government standards apply to the Services.
	2. The Supplier shall ensure that the Services are performed so that the Department complies with all Regulations, to the extent the Department’s compliance with the Regulations is dependent on the Services.
	3. Each of the Parties shall advise the other immediately if it becomes aware of any non-compliance or suspected non-compliance by the Supplier with the provisions of Clauses 41.1 or 41.2 in connection with the performance of the Services. If such an event occurs, the Supplier shall promptly make available to the Department any information that the Department reasonably requires for the purposes of any further investigation of such non-compliance or suspected non-compliance.
	4. If the Supplier receives any correspondence from any Regulatory Authority (save in respect of: (i) corporation tax; or (ii) NICs) that relates to the Services, it shall promptly provide a copy of that correspondence to the Department unless it is prevented from doing so by the Regulations or a Regulatory Authority. The Supplier shall give the Department a reasonable opportunity to discuss and make representations on the practical and written response to such correspondence, and shall only respond to the Regulatory Authority if:
		1. the terms of the response have been approved by the Department (such approval not to be unreasonably withheld or delayed); or
		2. the Supplier is required by Regulations to respond to the Regulatory Authority without the Department’s consent.
	5. If a change to any Regulation means a change to the Services or Charges is required (a “**Regulatory Change**”), the Supplier shall, subject to Clauses 41.6 and 41.7, make that Regulatory Change as soon as reasonably possible.
	6. The Parties shall agree the details and cost of the Regulatory Change in accordance with the Change Control Procedure.
	7. If there is any disagreement between the Parties regarding any Regulatory Change or potential Regulatory Change the Department shall:
		1. have the right to determine: (a) whether a Regulatory Change is required; and (b) how the Supplier shall implement that Regulatory Change, in which case the Supplier shall promptly implement the Regulatory Change as determined by the Department in accordance with this Clause 41.7.1; and
		2. pay the Supplier the costs of implementing the Regulatory Change which shall be equivalent to the Supplier’s reasonable costs, calculated on a Time and Materials Basis, save that if the Regulatory Change is carried out for other service recipients of the Supplier, the Department shall only bear an equitable proportion of the Supplier’s reasonable costs.
14. Discrimination
	1. The Supplier shall have a written equal opportunities and diversity policy or shall sign a statement confirming adoption of the Department’s equal opportunities policy for the duration of the Term. The Supplier shall make a statement of such policy or confirmation of such adoption available to the Department upon request.
	2. The Supplier’s equal opportunities and diversity policy shall relate to all forms of unlawful discrimination which is prohibited under Article 14 of the European Convention on Human Rights and the Equality Act 2010 (the “**EA**”).
	3. The Supplier shall ensure that, in carrying out its obligations under this Agreement, neither it nor any of its Subcontractors commits or incites another to commit an act of discrimination rendered unlawful, or any act of discrimination which if committed by the Department would be rendered unlawful, by the EA, the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 or the Human Rights Act 1998.
	4. The Supplier shall ensure that it and its Subcontractors perform their obligations under this Agreement in a manner which enables the Department to comply and to demonstrate compliance with the equality duties imposed on the Department by and under the EA. In particular but without prejudice to the generality of the foregoing, the Supplier shall, subject to Clause 42.5:
		1. comply with all reasonable policies developed by the Department with regard to compliance with the duties imposed on the Department by and under the EA (the “**EA Policies**”) as are relevant to the provision of the Services and as are amended and notified to the Supplier by the Department from time to time;
		2. comply with all reasonable directions from the Department with regard to the provision of the Services in accordance with the EA;
		3. collect and supply to the Department such data and other information as the Department may reasonably request with a view to ensuring and demonstrating compliance with the EA; and
		4. provide all reasonable assistance to, and consultation and liaison with, the Department with regard to any assessment of the impact on and relevance to the provision of the Services of the duties imposed by the EA and the development or modification of the EA Policies relevant to the provision of the Services.
	5. If:
		1. any requirement imposed on the Supplier under this Clause 42 to comply with the EA or other legislation referred to in this Clause 42 constitutes an addition or alteration to the policies and requirements specified in this Agreement; and
		2. the Department is satisfied that, in complying with that requirement, the Supplier will incur expenditure significantly additional to that which would otherwise be incurred by the Supplier in complying with the EA in general

such requirement shall be incorporated into this Agreement through the Change Control Procedure. Prior to any such Change taking effect, the Supplier shall use Best Endeavours to comply with the requirement.

* 1. The Supplier will provide reports and other information reasonably requested by the Department from time to time to demonstrate that the Supplier and the Subcontractors are fulfilling their obligations under the EA.
1. Prevention of Fraud and Corruption
	1. The Supplier represents and warrants that neither it, nor to the best of its knowledge any Personnel, have at any time prior to the Effective Date:

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

43.1.2 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.

43.2 The Supplier shall not during the Term:

 43.2.1 commit a Prohibited Act; and/or

43.2.2 do or suffer anything to be done which would cause the Department or any of its Personnel, consultants, contractors, Subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

43.3 The Supplier shall, during the Term:

43.3.1 establish, maintain and enforce, and require that its Subcontractors 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

43.3.2 keep appropriate records of its compliance with its obligations under Clause 43.3.1 and make such records available to the Department on request.

43.4 The Supplier shall immediately notify the Department in writing if it becomes aware of any breach of Clauses 43.1 and/or 43.2, or has reason to believe that it has or any of the Personnel have been:

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

43.4.2 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; and/or

43.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Agreement or otherwise suspects that any person directly or indirectly connected with the Agreement has committed or attempted to commit a Prohibited Act.

43.5 If the Supplier notifies the Department pursuant to Clause 43.4, the Supplier shall respond promptly to the Department’s enquiries, co-operate with any investigation, and allow the Department to audit any books, records and/or any other relevant documents.

43.6 If the Supplier defaults under Clauses 43.1 and/or 43.2, the Department may by notice:

43.6.1 require the Supplier to remove from performance of the Services any Personnel whose acts or omissions have caused the default; or

43.6.2 immediately terminate the Agreement.

43.7 Any notice served by the Department under Clause 43.6 shall specify the nature of the Prohibited Act, the identity of the party who the Department believes has committed the Prohibited Act and the action that the Department has taken (including, where relevant, the date on which the Agreement shall terminate).

1. General
	1. This Agreement constitutes the entire agreement between the Parties with respect to the subject of this Agreement and (to the extent permissible by law) supersedes all prior representations or oral or written agreements between the Parties with respect to that subject matter, provided that neither Party is attempting to exclude any liability for fraudulent statements (including fraudulent pre-contractual misrepresentations on which the other Party can be shown to have relied). Each Party agrees, having considered the Agreement as a whole, that the provisions of the Agreement are fair and reasonable.
	2. The Supplier must not make any public announcement or issue any circular relating to this Agreement without the prior written approval of the Department.
	3. Each Party shall from time to time execute such documents and perform such acts and things as any Party may reasonably require to give full effect to the provisions of the Agreement and the transactions contemplated by it.
	4. **Waiver**
	5. No delay by or omission by either Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.
2. Notices
	1. Any notices to be given under this Agreement shall be delivered personally or sent by registered or recorded post or by facsimile transmission to the Contract Manager (in the case of the Department) or to the address set out in the Agreement (in the case of the Supplier). Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, if sent by post, 48 hours after posting or, if sent by facsimile transmission, 12 hours after proper transmission.
3. Dispute Resolution
	1. The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Agreement.
	2. Any dispute not capable of resolution by the Parties in accordance with the terms of Clause 47.1 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution Model Mediation Procedure.
	3. Neither Party may commence any court proceedings/arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle it by mediation, but any such mediation may be terminated by either Party at any time if such Party wishes to commence court proceedings or arbitration.
4. Law and Jurisdiction
	1. This Agreement shall be governed by and interpreted in accordance with English Law and the parties submit to the exclusive jurisdiction of the English courts.
5. TUPE
	1. No later than 6 Months prior to the end of the Term the Supplier shall fully and accurately disclose to the Department, within 30 days of the request, all information that the Department may reasonably request in relation to the Staff including the following:
		1. The total number of Personnel whose employment/engagement shall terminate at the end of the Term;
		2. The age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Personnel referred to in clause 7.1.1;
		3. The terms and conditions of employment/engagement of the Personnel referred to in clause 7.1.1, their job titles and qualifications;
		4. Details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
		5. Details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

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

* 1. At intervals determined by the Department (which will only occur in the last 6 months of the contract) the Supplier shall give the Department updated TUPE Information.
	2. Each time the Supplier supplies TUPE Information to the Department it shall warrant its completeness and accuracy at time of delivery and the Department may assign the benefit of this warranty to any Replacement Supplier.
	3. The Department may use TUPE Information for the purposes of any retendering process.
	4. If TUPE applies to the transfer of the Services on termination of the Contract, the Supplier shall indemnify and keep indemnified the Department, the Crown and any Replacement Supplier 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:
		1. the provision of TUPE Information;
		2. any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Supplier or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;
		3. any failure by the Supplier or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Department or a Replacement Supplier to comply with its duties under regulation 13 of TUPE;
		4. any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
		5. any claim by any person who is transferred by the Supplier to the Department and/or a Replacement Supplier whose name is not included in the list of Returning Employees.
		6. There will be no TUPE transfer from the Department to the Supplier.
	5. If the Supplier becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the Department and provide the Department with up to date TUPE Information.
	6. This clause 7 applies during the Term and indefinitely thereafter.
	7. Where applicable clause 48 will be stipulated in individual call offs.
	8. The Supplier undertakes to the Department that, during the 12 Months prior to the end of the Term the Supplier shall not (and shall procure that any Sub-Contractor shall not) without written approval of Department (such approval not to be unreasonably withheld or delayed):
		1. amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
		2. terminate or give notice to terminate the employment or engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
		3. transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual’s career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
		4. Supplier can recruit or bring in additional individuals to provide the services if personnel should leave. The supplier should inform the Department of any such change.

As witness the hands of the parties

|  |
| --- |
| **Authorised to sign for and on behalf of the Supplier:** |
| Signature: |  |
| Name in CAPITALS: |  |
| Position in Organisation: |  |
| Address in full: |  |
| Date: |  |

|  |
| --- |
| **Authorised to sign for and on behalf of the Secretary of State for Education:** |
| Signature: |  |
| Name in CAPITALS: | Colin Watson |
| Position in Organisation: | Deputy Director, Test Development |
| Address in full: | Standards and Testing Agency53-55 Butts RoadEarlsdon ParkCoventryCV1 3BH |
| Date: |  |

**Schedule 1 - Services**

**Section 1: General core services**

This section covers general requirements that must be delivered for each Trial or Sample, irrespective of size and duration. Bidders must demonstrate their ability to manage projects and programmes using established methodologies, such as PRINCE 2.

**G1 Project Management**

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| **No** | **Requirement** |
| **G1.1** | The Supplier must manage all aspects of delivery of the Services using established methodologies such as PRINCE2 and Management of Risk (MoR) project and risk management methodologies. |
| **G1.2** | The Supplier must submit a Project Initiation Document (PID)/start up document which clearly sets out the project for the delivery of services at the outset of each call-off. The PID/start up document cover all aspects of the delivery of the Project, including operational delivery, governance and interfaces with other organisations |
| **G1.3** | The Supplier must document, provide and maintain all processes and procedures utilised in the delivery of the services, including interfaces with other relevant parties ensuring that all relevant standards are applied or adhered to including project management methodologies. |
| **G1.4** | Prior to the commencement of a work package, the Supplier must discuss and demonstrate the readiness and appropriateness of plans, processes, systems (both internal and external), data interfaces with external or third party suppliers, resourcing and any other factors required to enable the reliable completion of the work package. |
| **G1.5** | The Supplier must hold, and permit DfE open access to detail relating to all activities undertaken in delivering the services.  |
| **G1.6** | The Supplier must comply with any reasonable requests for information from DfE. |
| **G1.7** | The Supplier must attend any meetings as reasonably requested by DfE at locations determined by DfE.  |

**G2 Management Information**

Management information is critical for DfE to assist performance management of the framework and individual call-off contracts and also to respond expediently to Parliamentary Questions / Freedom of Information requests. Tenderers must commit to being open and transparent and demonstrate a willingness to share information throughout the life of the framework.

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| **No** | **Requirement** |
| **G2.1** | The Supplier is required to submit to DfE Management Information (MI) and performance reports based on all services delivered for the call-off.The frequency, format and content will be specified within each call-off.DfE reserves the right to add to the Management Information requirements during the life of the framework. Any further requirements will be specified in individual Call-Offs. |

**G3 Security**

Due to the sensitive of the nature of this work, DfE enforce strict security procedures to ensure the work environment and working practices throughout the supply chain are secure.

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| **No** | **Requirement** |
| **G3.1** | The Supplier must ensure that a security manager is appointed who shall have ultimate responsibility for all aspects of information governance and security management relating to the Supplier Services.The supplier will provide and maintain a detailed, fully resourced and costed exit and transition plan to ensure a smooth transition at the expiry or termination of the contract. The supplier will provide a detailed statement in the exit and transition plan of all its requirements for the support it requires from DfE to ensure a smooth transition at the expiry or termination of the contract. The supplier must provide, and maintain, a list of all assets, for example materials software, data, people, contracts and other agreements planned to be used in the delivery of the contract. The supplier must identify assets that it anticipates will be transferred to DfE on expiry or termination of the contract. The supplier must also document the arrangements for and handing over such materials to DfE.The supplier must comply with the processes outlined in the STA External Suppliers Security Guide.: (See Document 4, Attachment 4)The supplier must also complete the security assurance document. |
| **G3.2** | The Supplier must require that any Sub-Contractor(s) are operating acceptable security policies, in line with the requirement at G3.1 above. The Supplier must confirm that a Sub-Contractor's security policies are acceptable, in line with the agreed requirements as at G3.1 above prior to letting the relevant sub-contract. The Sub-Contractor must agree to provide documented evidence of meeting these requirements to the DfE, including the completion of the Statement of Assurance Questionnaire. |
| **G3.3** | The Supplier must ensure that all physical and logical movement of materials are secure and meet latest HMG Information Assurance requirements. Suppliers must present in advance to the DfE proposals for all methods of movement of materials both physical and logical. These proposals must be pre-agreed by the DfE prior to any materials movements. |
| **G3.4** | No materials or data related to the Services shall be transferred or processed outside of the European Economic Area (EEA) at any time, unless DfE has given its explicit consent to such transfer or processing. |
| **G3.5** | The Supplier will co-operate with DfE at all times to allow access to Supplier and any sub-contractor premises and systems to allow assurance to take place that all plans policies and procedures are being complied with by the Supplier, or to verify any suspected security issues. |
| **G3.6** | The Supplier must ensure that any payment procedures using debit or credit cards must meet the **Payment Card Industry Data Security Standard** (PCI DSS) As defined by the [Payment Card Industry Security Standards Council](http://en.wikipedia.org/wiki/Payment_Card_Industry_Security_Standards_Council). |
| **G3.7** | The Supplier must ensure all staff working on the test materials sign a confidentiality agreement and a security declaration confirming they will comply with the Supplier's security policy and standards. DfE may request evidence of this at any time. Failure to provide evidence will be a breach of the contract. |

**G4 Equalities**

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| **No** | **Requirement** |
| **G4.1** | The Supplier will at all times comply with and require that its sub-Contractors comply with the latest Equalities legislation. |
| **G4.2** | The Supplier will provide reports and other Management Information to DfE, at intervals to be agreed, to demonstrate that the Supplier and its sub-Contractors are fulfilling their obligations under the latest Equalities legislation. |
| **G4.3** | The Supplier shall agree and implement any changes to the equality plan in line with DfE Change Control Procedure. |
| **G4.4** | The Supplier shall nominate a representative for all equalities issues. |
| **G4.5** | The Supplier shall produce an equality plan for each call-off outlining their commitment and compliance to the latest Equalities legislation and report at regular intervals (checkpoint reports) and include a final statement within the final administration report. |
| **G4.6** | The Supplier will include within the equality plan the strategy for recruiting and selecting administrators and markers / coders. The Supplier will provide evidence of a fair, open and transparent process, including but not limited to protective characteristics. |
| **G4.7** | The Supplier will include in any administration guidance and training information advice on dealing with pupils that require access arrangements.  |

**G5 Financial requirements**

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| **No** | **Requirement** |
| **G5.1** | The Supplier's financial accounting system must be able to capture all financial and system coding in order to fulfil management and statutory accounting. All expenses and invoices submitted will be subject to VAT. For clarity refer to the HMRC rules and regulations.  |
| **G5.2** | A contractual agreement must be defined and agreed with the administrators and / or markers / coders involved in submitting the work.  |
| **G5.3** | The Supplier will ensure where BACS is used that BACS information is controlled and kept secure in order to reduce the risk of fraud. All payments must be countersigned and have the necessary approval documents / receipts that must be attached and made available prior to payment. All work needs to verified that is has been completed and delivered.  |
| **G5.4** | The Supplier must pay all sub-Contractors within 30 days of receipt of invoice. |
| **G5.5** | The Supplier must make the following information available on their invoice:* full address
* contact number
* VAT number (VAT number may or may not be applicable depending on the size of the organisation).
 |
| **G5.6** | The Supplier will instigate a fraud detection and response plan so that all controls are setup on the system.  |

**G6 Resources**

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| **No** | **Requirement** |
| **G6.1** | The Supplier must have suitably qualified and experienced staff (or immediate plans to access these resources as appropriate). Skills and qualifications of identified Key Personnel should cover all major aspects of the Service including commercial management, project management, technical skills and general management.  |
| **G6.2** | The Supplier must agree with DfE which posts are considered as key posts, where knowledge or skills are critical to success. |
| **G6.3** | The Supplier must maintain up-to-date CVs of all key personnel and make them available on request. |
| **G6.4** | The Supplier must provide advance notification to DfE of any changes in key personnel. Replacement personnel should have equivalent skills and qualifications and DfE reserve the right to refuse proposed replacements. |
| **G6.5** | Suppliers should demonstrate that where there are plans to use third party sub-contracted resources or services, that these are reliable, available and meet other criteria outlined in this SoSR, especially Security. The Supplier must provide and maintain details of who these resources are, how they will be used and how they will be managed. |

**G7 Exit and transition**

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| **No** | **Requirement** |
| **G7.1** | The Supplier will provide and maintain a detailed, fully resourced and costed exit and transition plan to ensure the smooth transition of Services to a successor service provider. |
| **G7.2** | The Supplier will provide a detailed statement in the exit and transition plan of all its requirements for the support it requires from DfE to ensure smooth transition of service to a successor service provider at the expiry or termination of the Framework.   |
| **G7.3** | The Supplier must provide, and maintain, a list of all assets, for example materials software, data, people, contracts and other agreements planned to be used in the delivery of services.  The Supplier must identify assets that it anticipates will be transferred to DfE on expiry or termination of the Framework or on completion of any individual call-off order. The Supplier must also document the arrangements for and handing over such materials to DfE. |

**G8 Business Continuity**

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| **No** | **Requirement** |
| **G8.1** | The Contractor shall, as a minimum, have in place robust and ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures 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 be, or could lead to, a disruption, loss, emergency or crisis. When a certificate is not available it shall be necessary to verify the ongoing effectiveness of the ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures, to the extent that the Contractor must have tested/exercised these plans within the last 12 months and produced a written report of the test/exercise, outcome and feedback, including required actions.  |

 **Section 3: Core Technical Services**

**SA1 Recruitment and management of schools**

The Supplier must manage schools with sensitivity in order to ensure schools fulfil their statutory duty to participate in Trialling and Sampling. This includes considering recruitment strategies and the tone of all communications with schools, reassuring schools that the workload placed on them will be kept to a minimum, and ensuring that the Trialling and Sampling takes place at a mutually convenient time.

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| **No** | **Requirement** |
| **SA1.1** | Recruitment and retention strategy submitted to DfE in order that samples can be drawn. For statutory trials, this must include any mitigations and contingencies that will be enacted if schools prove difficult to fulfil their statutory requirements. The Contractor must recruit all schools drawn in the samples.For voluntary trials, the Contractor must specify a sample size and recruitment strategy such that a representative sample of schools is achieved with the minimum number of pupils required sit each version of each test.  |
|  | For school recruitment there are three approaches:* DfE provide the stratifiers and the number of pupils required to take each booklet, the Supplier provide information on how they will recruit to those requirements and DfE draw the sample;
* DfE provide the stratifiers and the number of pupils required to take each booklet and the Supplier draws the sample (Optional requirement);

The approach to be used will be confirmed in the call-off. |
| **SA1.2** | For voluntary trials, any required adjustments to the sample must be taken into account when specifying the sample: for example, if a larger sample is to be selected to account for the expected response rate and / or an additional sample is to be selected to function as a 'top-up' sample. The Supplier must inform DfE if a top-up sample is required (no later than date specified). If required, top-up samples will be provided by DfE within 5 full working days. |
| **SA1.3** | The Supplier may be required to define the sample(s) according to criteria set in consultation with DfE. The criteria will depend on the purpose of the Trialling / Sampling but may include considerations such as sample size, age of pupils, time of year, type of school, sampling methodology (e.g. school level versus pupil level) and data source. |
| **SA1.4** | The Supplier may be required to produce a sample specification document outlining the sampling methodology to be used, for sign-off by DfE. If the Supplier has been asked to determine the sample size, the sample specification document must include all information necessary for drawing the sample and must include a statistical justification for the recommended sample size (Optional requirement) |
| **SA1.5** | The Supplier may be required to ensure that each sample is stratified by suitable variables, to be determined in consultation with DfE. The most common requirement is for a Trial / Sampling test to be stratified by achievement at the relevant key stage, region and school type, but this may differ for different purposes. Other possible relevant variables include the proportion of pupils eligible for free school meals or the proportion of pupils with English as an additional language. This list is not exhaustive. |
| **SA1.6** | Where there are separate subjects in a trial, the DfE will provide separate samples for each subject.Each school drawn in a sample, will only participate in one trial, for one subject, unless otherwise specified by DfE for a particular call-off. |
| **SA1.7** | The Supplier may be required to draw the required samples of schools according to the specification approved (or provided) by DfE (Optional requirement). |
| **SA1.8** | The Supplier may be required to draw the sample from a suitable data source (e.g. the National Pupil Database – NPD) and must obtain the data and approval for its use from the relevant authority (e.g. the Department for Education NPD requests team) (Optional requirement). |
| **SA1.9** | The Supplier may be required to provide a summary of the sample drawn to DfE for sign-off, providing a breakdown by the stratification variables and any other appropriate variables (to be defined for a particular call-off) (Optional requirement).  |
| **SA1.10** | The Supplier must assign schools and pupils to assessment instruments according to a design model provided by DfE. In many instances pupils will be required to take more than one test instrument for a subject. |
| **11** | The Supplier must ensure successful management of schools to achieve the required number of pupils. If target numbers of pupils have not been recruited by previously agreed dates, additional schools will need to be approached in order to achieve sufficient numbers (a 'top-up' sample). All recruitment will be the responsibility of the Supplier under the terms of the call-off.  |
| **SA1.13** | **Communication with schools**For Statutory and voluntary Trialling projects the Supplier must provide a Communication strategy outlining the approach they would take to communicating with schools and or local authorities. This will be agreed with DfE as part of the project set up phase for each call-off. The strategy should include: * which channels the Supplier will use for its communications (for example emails, letters, websites) and the rationale for using them
* an outline timeline for developing and issuing communications

For Sampling projects communications will be led by DfE or the Supplier. This will be agreed during the call-off phase. Communications will adhere to DfE’s overarching strategy and house style. During the project set up phase, the Supplier will have the opportunity to review DfE’s communications strategy for the project. The Supplier will be required to: * contribute to the drafting of materials for schools and or LAs
* sign off content for factual accuracy

If the Supplier leads, they must provide a Communication strategy outlining the approach they would take to communicating with schools and or local authorities. This will be agreed with DfE as part of the project set up phase for each call-off. The strategy should include: * which channels the Supplier will use for its communications (for example emails, letters, websites) and the rationale for using them
* an outline timeline for developing and issuing communications
 |
| **SA1.14** | The Supplier must ensure all schools included in a Trial or a Sample sign a confidentiality agreement. This must be signed by all adults who are present during the administration for example teachers, teaching assistants, or any other adults who may act as readers, amanuenses, translators or in any other capacity.  |
| **SA1.15** | **Trial Administration**The Supplier must collect all required pupil background data from schools. This may be done either on the day of administration using hard copy pupil data forms or prior to the administration using a secure site or portal. The exact data required will be dependent on the type of Trial but may include full name, date of birth, the status of pupils with respect to SEN or English as an Additional Language (EAL), and Teacher Assessment (TA) information.All Trialling should occur in a school on the same day, especially where only one or two papers are required to be administered. Schools may request Trialling over two days in special circumstances. Some Trials may require pupils to complete a number of papers. Where this occurs, Trialling in one day may not achieve the best results. However, this will be identified in individual call-off orders within the framework agreement. The Supplier must provide all necessary materials to schools. Materials must not be photocopied within schools during the Trialling window. If any pupil requires access arrangements, schools will need to notify the Supplier prior to the test administration. If any issues arise while the administrator is in the school, he / she should contact the Supplier for advice. The supplier must ensure there are individuals available to take calls from administrators throughout the administration window.The proposal must contain details of fixed and variable costs for Trialling and a plan to show the potential number of schools for each subject and potential number of visits. Costs must be transparent and presented in a way which will allow DfE to pre-estimate costs of call-off orders.**Sampling Administration**The Supplier will be provided with details of the children to be tested. The supplier will need to provide a mechanism for schools to communicate where children will require access arrangements. The details of these access arrangements will need to be communicated to the test administrators prior to the administration of the tests so the necessary pre-planning and organisation of resources can take place.All sampling test administration should occur in a school on the specified day. Some sampling may require testing in a school on more than one day to achieve the most representative results. However, this will be identified in individual call-off orders within the framework agreement. The Supplier must provide all necessary materials to schools. Materials must only be photocopied within schools to accommodate the administration of agreed access arrangements during the specified sampling window. If any issues arise while the administrator is in the school, he / she should contact the Supplier for advice. The agency must ensure there are individuals available to take calls from administrators throughout the administration window.The proposal must contain details of fixed and variable costs for Sampling and a plan to show the potential number of test administrators required to administer the sampling tests to the required number of schools in the specified timeframe. Costs must be transparent and presented in a way which will allow DfE to pre-estimate costs of call-off orders. |
| **SA1.16** | The requirements for access arrangements for pupils differ for Trialling and Sampling. Specific requirements will be outlined in each call off.  |
| **SA1.17** | DfE reserves the right to observe a small number of schools during administration of the tests for quality assurance purposes and to obtain feedback on test materials from schools, pupils and / or administrators directly. During the school recruitment process,the Supplier must seek permission from schoolsfor DfE representatives to observe any administration visits. |

**SA2 Recruitment, training and management of administrators**

A key part of the test administration process is the provision of qualified and professional individuals who are able to administer each test effectively. It is critically important that all individuals understand and are aware that they represent the DfE and are responsible for the secure management of every pupil's test. This section provides the requirements necessary to recruit and train a pool of suitable administrators.

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| **No** | **Requirement** |
| **SA2.1** | The Supplier must set up, recruit and maintain a pool / register of professionally qualified personnel who can be deployed to administer tests. This pool / register must be made available to DfE on request. |
| **SA2.2** | The Supplier must recruit and manage a pool of test administrators, for all Trials or Sampling that the Supplier has bid for in call-offs resulting from this framework, to ensure secure administration at each school within the agreed test administration period. If more than one class is involved in the Trial / Sampling at any one school, or for example there are a significant number of pupils requiring access arrangements for administration, more than one administrator may be a required at a school. |
| **SA2.3** | The Supplier must ensure all administrators have a professional attitude, have a valid DBS (Enhanced) certificate and possess suitable organisational, communication and time management skills to fulfil the role. Test administrators will normally be trained teachers and approval must be sought from the Department to use non-teachers. All administrators would need to regularly declare any interests he or she may have in this area of work (for example having children or grandchildren of the appropriate age).  |
| **SA2.4** | The Supplier must ensure the pool / register of test administrators is spread nationally across England to minimise the Supplier's carbon footprint.  |
| **SA2.5** | The Supplier must provide induction training for all test administrators prior to being deployed at a site. Training should be provided face-to-face with administrators, and provision should be made for DfE staff to attend and provide aspects of the training. The proposed location to be agreed with DfE. It is the Supplier’s responsibility to determine the level of support required for administrators following their training. Some aspects of the training may be reinforced in an online version. The training would need to ensure administrators work to requirements in the areas of * setting expectations of behaviour as a representative of DfE
* confidentiality
* receiving materials and confirming receipt of materials
* storage at home
* working with schools (agreeing a time and ensuring the school has appropriate expectations of the administration, working with the school during the administration)
* secure transportation to and from testing location
* security procedures while in schools
* administration in schools, including dealing administering agreed access arrangements
* context of national Sampling and the implications for administrators giving and collecting feedback and the type of feedback that is useful for test development
* context of the Trials and differences in types of Trialling (informal Trialling, small scale item Trials and technical pre-tests) and the implications for administrators
* administering modified test versions and access arrangements pupils in the context of the Trial and Sample administrations
* Supplier's security policy and standards, including:
* methods of secure delivery of materials between the Supplier and administrators
* escalation procedures in the event of security incidents
* what to do in the event of an emergency during the test administration

DfE may request evidence at any time that administrators have been trained appropriately, through reviewing and inputting to the training materials and other methods. |
| **SA2.7** | The Supplier must ensure all test administrators receive refresher training, as a minimum, on a biennial basis. Training should be provided face-to-face with administrators, and provision should be made for DfE staff to attend and provide aspects of the training. It is the Supplier’s responsibility to determine the level of support required for administrators following their training. Administrators may need additional training if there is a Trial or Sampling with special requirements (e.g. administration of modified versions, or administering to young pupils).Any training requirements required by the pool of existing or new administrators should be outlined in each call-off bid. |

**H1 Helplines**

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| **No** | Requirement |
| **H1.1** | The Supplier may be required to provide a helpline facility to deal with calls regarding all aspects of the Trialling or Sampling process to support schools, markers / coders and administrators. This helpline may be required to record all calls using DfE’s CRM system (or be able to interface to it), for which training will be provided.As a minimum the helpline must:-* be able to accept multiple inbound calls on the same telephone number
* make outbound calls
* be able to accept warm transfers of calls from the STA Helpline

The route for support calls must always follow the same process: Call originator ⇨ Supplier first line support, or Call originator ⇨ STA Helpline ⇨ Supplier first line support |
| **H1.2** | The Supplier will be responsible for recruiting and training staff for the helpline. They must also maintain the agreed staffing levels throughout the call-off period. |
| **H1.3** | The Supplier must have an escalation strategy in place for dealing with calls that cannot be answered by the helpline staff. In addition the Supplier must provide support materials, for example FAQs which are made available to users where appropriate. |
| **H1.4** | The helpline will provide MI to DfE detailing the nature of the calls, the number of calls received and performance levels, as detailed in specific call offs. |

**PL3 Collation and distribution of assessment instruments**

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| **No** | **Requirement** |
| **PL3.1** | The Supplier may be required to collate materials for administrators according to the requirement in SA1.If materials are printed and collated outside of this framework, the Supplier will need to confirm contents of each school pack before it is sent to administrators. The Supplier will be held accountable for all materials going out to schools. The materials must be collated into packages to go out to schools and the number of tests in each package will be dependent on the number of pupils to be tested in each school. The school packages must contain all the information and material that is required in any one school (the correct combination of papers) for the administration of the materials in schools. Each package must be double wrapped in tamper evident packaging to suit the pack size and logistic method; each layer must be addressed to the sender.The Supplier shall carry out assurance test and supply reports to DfE to demonstrate that the chosen packaging is fit for purpose prior to collation. The nature and scope of these tests will be defined in each call-off. |
| **PL3.2** | **Carton packaging** – if carton packaging is used, the Supplier should provide a Mullen test report showing Burst and Edge crush testing results to demonstrate that the packaging is fit for purpose. The supplier shall ensure that each carton is taped on every corner to ensure clear identification of the product at all times. The DfE will provide tape for this purpose.The Supplier shall carry out assurance test and supply reports to DfE to demonstrate that the chosen packaging is fit for purpose prior to collation. The nature and scope of these tests will be defined in each call-off. |
| **PL3.3** | Five sample enclosing packs should be provided to DfE of any collated pack supplied to administrators by the Supplier for DfE records.  |
| **PL3.4** | The Supplier is responsible for the management of all logistical movements of materials. The Supplier shall provide daily reports a minimum of twice a day at 9am and 5pm when packages are in the logistics network. DfE may require more frequent reporting and will be detailed in the call-off. |

**SA3 Secure administration of assessment instruments in schools**

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| **No** | **Requirement** |
| **SA3.1** | The Supplier must ensure all administrators have suitable identification prior to any visit to enable the school to check their identity. |
| **SA3.2** | The Supplier must produce guidance material / packs for administrators prior to visiting a site. This must include full written instructions and expectations of their role, administration guidance, relevant information on the type of administration being used, security procedures, information on sending and receiving materials to and from the Supplier, relevant information to help the administrator answer any questions from the school (and contact details for a named individual if the guidance does not answer a question posed by the school). Sign-off of these materials should be obtained from DfE for each call-off. |
| **SA3.3** | Administrators must ensure that each pupil receives the correct booklets. The Supplier must provide instructions to administrators on linking the IDs on test booklets to individual pupils. For Sampling, an administrator must accurately complete an attendance register for each class in each school that they visit. |
| **SA3.4** | The Supplier must ensure the secure return of all test materials, used and unused, from each school visit in accordance with requirement G3. This includes any pupil background data forms, questionnaires and supporting documentation. Administrators must ensure that all materials are accounted for at all times. This will include counting all materials on arrival at the school and ensuring that material is accounted for before the administrator(s) leave(s) the schools. While in schools, all materials must remain in the same room as the administrator(s). The administrator must provide a list of the contents (manifest) of each package within the package and send via email to the Supplier as the package is picked up for return to the Supplier. The manifest should not include information about the contents of the test or pupils participating in the Trial or Sampling.The Supplier must check the contents of all packages against the manifest once it is delivered. Any discrepancies must be reported to DfE immediately, providing details of the process in place to investigate and recover lost and missing materials. |

**DM1 Data handling**

Maintaining the security of test materials and pupil data is of primary importance in any work associated with this framework. The Supplier must have processes in place to ensure all test materials and pupil data is tracked and accounted for at all stages. DfE requires that systems are tested robustly with DfE participation and that all ICT systems meet the mandatory requirements of the Cabinet Office Security Policy Framework, the Data Protection Act and industry best practice to maintain the information assurance of Business Impact Level appropriate to the data being managed by the individual call-off.

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| **No** | **Requirement** |
| **DM1.1** | **Tracking test materials during delivery**In order to maintain security of the test materials, any comment forms and pupil background data, appropriate systems must be in place, which meet the requirements set out in G2, G3 and SA3. Where issues are identified in the delivery of materials, the following steps must be taken:* notify DfE immediately through an issue report
* report and follow up on any discrepancies between what was sent to each administrator and / or the stated contents of any package
* produce an MI report for DfE on a twice daily basis outlining the delivery status of all materials in transit.
 |
| **DM1.2** | **Procedures to account for test materials throughout administration and marking / coding**The Supplier must allocate the number and type of papers to each school taking part in the Trial or Sampling in order to minimise school effects on the data. This allocation must be approved by DfE.The Supplier must ensure that each test version is administered to an appropriate number of pupils overall.The Supplier will need to develop a individual bar code or unique number that allows all the test scripts for each paper to be tracked throughout the process and helps administrators know which combinations of papers must be administered in each school to each pupil.Pupils must be allocated to test papers as per the design model provided by DfE in order to achieve the required number of pupils taking each combination of papers.The Supplier must advise DfE on the final print runs and unique numbers to be printed on all the test booklets.The Supplier should keep a clear and comprehensive record of all papers based on the unique number, showing how they have been allocated to schools and administrators, using databases as necessary. This must be used to check all returns from administrators.The preferred method of pupil background data collection is through secure online methods directly from schools. Pupil background data will be confirmed during the administration. Where schools have not provided data before the administration, the data must be collected by administrators electronically or on paper. Where issues are identified in accounting for materials during administration and marking / coding, the Supplier must notify DfE immediately through an issue report. |
| **DM1.3** | The Supplier must ensure that appropriate documentation is provided at each stage of the process when test materials or pupil background data are delivered to administrators, the DfE or any individual or organisation external to the Supplier. The documentation must include a complete list or manifest of what is contained in each parcel. A copy of the manifest must be forwarded to the receiving agency once the parcel has been picked up for delivery.  |
| **DM1.4** | Any specific requirements for printing test booklets relating to the administration and tracking procedures must be agreed with DfE at the start of the project so this can be taken into account when designing them.  |
| **DM1.5** | The Supplier must provide 100% of all pupil background data to DfE following the administration period and prior to the start of the marking / coding window. The preferred method of collection of pupil background data from schools is via secure electronic means. The data required must include a unique pupil ID which can be used to link performances of the same pupil across different assessment instruments. Other variables, and the format of the data, will be specified for a given call off but are likely to include gender, TA level, SEN status, EAL status / fluency, year group and date of birth. |

**DM2 Data capture and management**

DfE requires that systems are tested robustly with DfE participation and that all ICT systems meet the mandatory requirements of the Cabinet Office Security Policy Framework, the Data Protection Act and industry best practice to maintain the information assurance of Business Impact Level appropriate to the data being managed by the individual call-off.

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| **No** | **Requirement** |
| **DM2.1** | Where not captured at point of decision (i.e. OSM), the Supplier must carry out accurate data capture of information from tests and questionnaires. DfE will provide access to a secure portal for the transfer of data from the Supplier to DfE. |
| **DM2.2** | The Supplier must provide details of the data capture quality assurance processes in the proposal for approval by DfE. The data capture process is one that should be detailed in a product description. The proposed processes must include a process for dealing with exceptions efficiently and must ensure the accuracy of the data captured.  |
| **DM2.3** | The Supplier must provide the data in the file format specified in the call-off. DfE will provide the required file structure template and acceptability criteria for the fields to be captured. |
| **DM2.4** | The Supplier must provide secure transfer of pupil and item data in compliance with DfE's Test Development Suppliers Security Policy, the Data Protection Act and the requirements set out in the SPF. |
| **DM2.5** | The Supplier must provide DfE with data feeds on agreed dates as per the call-off.The number and specification of the data feeds will be included in each call-off order. |
| **DM2.6** | The Supplier should provide DfE with additional data feeds on agreed dates, to include data captured up until that point in order to enable DfE to track progress and to carry out checks on the data as set out in each call-off. |
| **DM2.7** | The Supplier should provide DfE with daily updates throughout the data capture process on the number of test scripts (or other metric, as appropriate) captured to date. |
| **DM2.8** | Captured data should be retained by the Supplier for six months following handover to DfE, and then should be deleted. |
| **DM2.9** | The Supplier must provide a Data Capture mechanism / system for Paper Based marking / coding or an OSM System. This will be used to capture all coding data for each Test Script. For Sampling marking / coding the solution(s) must also enable the capture of a valid Attendance Code for a Pupil where no Test Script has been presented for marking / coding, either by the Marker or by the Supplier. The format and specification of the solution(s) must be agreed in advance with DfE. |
| **DM2.10** | The Mark Capture Mechanism for paper based marking / coding must capture item level coding data for each Test Script. Data for all marking/coding completed and submitted must be supplied to DfE in accordance with the agreed data specification for the Trial / Sampling. Specification to be agreed at start-up. The supplier must also define the quality assurance procedure that will be followed to ensure the integrity of the data provided. |

**DM13 Administration reports**

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| **No** | **Requirement** |
| **DM13.1** | The Supplier must produce (an) administration report(s) for each call-off.The specific requirements will be outlined in call-offs resulting from this framework but the administration report may include, but not be limited to, the following aspects as an example: * an analysis of questionnaires
* information on the number of schools approached, accepted, withdrawn, not responded and other related useful information
* reasons why schools declined to take part
* feedback on school recruitment, administration, issues arising and other related useful information
* identification of the number of completed test scripts received by instrument and any reasons for discrepancies between the number returned from schools and the number passed on for marking / coding
* the number of completed test scripts for each paper and combination of papers
* a table of achieved sample representativeness and a comparison with the appropriate population, showing the stratification of the samples as agreed in the call-off but usually by school attainment in the relevant key stage, school type and region.
* information on the monitoring and compliance with the Equality Act 2010
* how the pupil background data was collected and handled (e.g. verification procedures)
* lessons learned from the project and recommendation for future administrations.
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| Architecture and Standards |
| **ANS1.1** | *Maximising benefit to the Authority and its partner organisations* – the Supplier shall provide a flexible and scalable solution that is capable of meeting changing demands and incorporating any additional requirements. |
| **ANS1.2** | *Interoperability -* the architecture shall adopt open and industry de-facto technical standards wherever possible for its major interfaces. This for example includes but is not limited to interfaced via RESTful API’s.  |
| **ANS1.3** | *Commercially Off The Shelf (COTS) and Open Source Solutions –* The supplier shall, where appropriate, utilise pre-existing code to meet requirements, rather than developing bespoke code. Both commercial off the shelf (COTS) and Open Source components may be incorporated within the system, provided the supplier is able to demonstrate the functional and cost benefits associated with their component selection. |
| **ANS1.4** | The solution **must** support web accessibility and be (at a minimum) compliant to Level AA of the W3C Web Content Accessibility Standards.  | <http://www.w3.org/TR/WCAG20/> |
| **ANS1.5** | The Supplier’s solution **must** follow W3C web design standards to ensure compatibility with common client browsers.  | <http://www.w3.org/standards/webdesign/> |
| **ANS1.6** | The Supplier’s solution **must** provide discrete environments to support live production activities, User Acceptance Testing and Development activities. The Supplier must supply clearly defined plans and processes showing how system changes will be transitioned between environments.  |
| **ANS1.7** | The Supplier shall ensure that certain parts of the website’s static data (such as terms and conditions) can be updated at request by the Authority without charge. This does not include the practice tests.  |
| **ANS1.8** | Any digital communications channels will need to be developed in accordance with the GDS Digital Service Standard (<https://www.gov.uk/service-manual/service-standard>)Any branding must be in line with Authority brand guidelines. Online branding will need to be developed in accordance with the GDS service manual and GOV.UK templates (<https://www.gov.uk/service-manual/design>) |
| **ANS1.9** | The Supplier shall, as a minimum, have in place robust ISO/IEC 20000 and/or ITIL conformant Service Management arrangements and processes, including (but not limited to) Incident, Problem and Change Management. Incidents shall be defined with priorities, response / resolution times and escalation routes, to be agreed with the Authority. Overall performance of Service Management processes shall be reported monthly to the Authority and against agreed Key Performance Indicators (KPIs). Reporting and any escalation shall take place between the Supplier’s nominated Service Manager and their counterpart in the Authority. |
| **ANS1.10** | The Supplier will ensure that their system is designed in a manner that does not preclude possible future integration with a strategic Identity and Access Management (IDaM) solution provided by Authority, using industry standard protocols (SAML2/OAUTH/OpenID Connect). |

**M1 Marking / Coding of test scripts**

Marking / coding is an important part of the process for Trialling and Sampling and the use of experienced markers / coders who hold senior positions in the current live test marking / coding hierarchies is important in order to fully develop the coding frames.

All materials are coded in Trials and in the science Sampling so that DfE has a greater depth of information on how pupils have responded. Coding frames are used to describe the coding methodology with coders, as opposed to mark schemes, which are used in most live marking scenarios.

Markers / coders will input into the development of the mark schemes / coding frames that will eventually be used in the live tests. However, coding of Trials requires coders to be aware of the types of misconceptions pupils have, to be aware of what could be creditworthy based on their knowledge and understanding of previous marking / coding cycles and of the subject, even if it is not yet in the coding frame, and to be able to identify responses that would be useful for inclusion in the coding frame or marker training materials. Where appropriate, markers / coders and test developers must take into account any historical marking / coding principles so marking / coding is consistent between years.

The use of experienced markers / coders ensures they have the necessary understanding of the quality of materials that will be required for the live marking / coding process.

DfE is aware that there are likely to be a number of competing demands on the small pool of markers / coders who hold the senior positions within the marking / coding population at certain times of the year and will endeavour to time any Trialling and Sampling marking / coding activities around any existing live marking / coding requirements.

Suppliers must provide an on-screen marking / coding system (OSM). The on-screen marking / coding system requirements are emboldened in the tables below. Each OSM system requirement states whether it is **essential (coloured red)** or **desirable (coloured blue)**. All suppliers will either need to demonstrate that they can meet the essential requirements, or have a viable work around that will allow the requirement to be met.

Specific requirements for marking / coding of individual Trials / Sampling test will be specified in call-offs.

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| **No** | **Requirement** |
|  | **Recruiting and contracting markers / coders** |
| **M1.1** | The Supplier must recruit and contract sufficient markers / coders in order to complete all marking / coding within the agreed milestone dates.For Trial / Sample marking / coding, the Supplier will be required to contract the senior marking / coding team, which will typically consist of a group of Lead Markers / Coders (LMs) and Deputy Lead Markers / Coders (DLMs) (as required). The senior marking / coding team is required to provide expertise in the development of the coding frames before and during Trial marking / coding, the recruitment process for the LM and DLM posts must assess applicants skills and experience in this area of work. Markers / Coders of all ranks must have completed marking / coding (to the required quality standards) in the current or most recent live test marking / coding cycle for the relevant subject. Where there is not a current live test marking/coding programme for the test items being Trialled at a minimum: all Markers / Coders must have Qualified Teacher Status (QTS) and at least one year’s qualified teaching experience in the relevant subject / key stage following such qualifications, as a minimum. DfE will facilitate the distribution of invitations to markers / coders on the current national curriculum Register of Markers / Coders to the Supplier to support this requirement. |
| **M1.2** | The Supplier must ensure that there are effective and timely communications with Markers / Coders throughout the Trial / Sampling marking / coding so that Markers / Coders are aware of the status of their engagement by the Supplier, training and marking / coding requirements, and payments status and these are all an integrated part of the Marker communications strategy and plan. The communications plan must allow sufficient time for the necessary quality review and agreement processes. |
| **M1.3** | The Supplier must ensure the contractual fees and expenses structure is developed taking into account the equivalent live national curriculum tests marking / coding fees for the relevant test in the Trial / Sampling. DfE will provide this information at the outset of a contract. Some adjustment of contractual fees may be considered in lieu of the expertise provided by markers / coders in inputting to the development of the coding frame.Fees and expenses structures are to be agreed with DfE. Once approved the Supplier shall not amend the terms on which markers / coders are engaged without DfE’s prior written consent. |
|  | **Marker register** |
| **M1.4** | The Supplier must maintain a Marker Register including the following information: * Details of the test(s) to which Markers / Coders were allocated for the current Trial / Sampling;
* Details of any issues relating to Markers’ / Coders' performance for the current Trial / Sampling.

A copy of the final Marker Register will be provided to DfE at the end of the marking / coding period for the relevant Trial / Sampling. The Supplier must provide a valid record in the Marker Register for all data fields required by DfE. The Supplier must ensure that data from the Marker Register is accessible, up-to-date, 100% accurate and made available in the format specified by DfE, and within the time specified by DfE.  |
| **M1.5** | The Supplier must require that all Markers / Coders declare any personal interest in any School or Pupil during their contracting process. The Supplier must record all cases of declared personal interest as well as any instances where no personal interest has been declared. The Supplier must ensure that Markers / Coders either declare an interest or declare ‘no interest’. The Supplier must ensure that Markers / Coders are obliged to notify the Supplier of any changes in their declared personal interests following their contracting for the Test Cycle e.g. if the School they are employed at changes. |
| **M1.6** | The Supplier must ensure that all contracts with Markers / Coders state that DfE shall be the data controller (as defined in the Data Protection legislation) of any Personal Data that relates to the Markers / Coders and that is processed in connection with national testing. The Supplier must also ensure that the contracts include notices stating the purposes for which Personal Data will be processed by DfE and its Suppliers (one of which will be to audit the quality of the marking / coding). |
|  | **Marking / coding and training plan** |
| **M1.7** | The Supplier must ensure that the method of delivery used as the marking / coding model is appropriate to the subject and the scale of the Trial / Sampling and takes into account the process followed for the equivalent live national curriculum assessments. The marking / coding model will be defined in the call-off for each Trial / Sampling administration. In this framework agreement, the modes of marking / coding that could be used are:* paper based marking / coding at home or at a centralised location.
* onscreen marking / coding at home or at a centralised location.

The Training Model for any administrative or System training must reflect what is required from Markers / Coders in respect of these activities. Where training is to be delivered online, the Supplier must ensure all Markers / Coders have managed access (via the issue of secure log-in details) to the system.  |
|  | **Marker payment** |
| **M1.8** | The Supplier must utilise an appropriate mechanism for paying markers / coders the correct amount for work undertaken and completed, based on accurate data. This is likely to include analysis of information regarding the quantity of test script marks submitted or the time spent marking / coding, supervisory duties undertaken and attendance at meetings. The Supplier must administer payments to markers / coders and reimburse associated expenses. The Supplier must provide a mechanism to ensure that markers / coders are paid without delays and in any case no later than 30 days after the completion of services. |
|  | **Preparation of materials for training and marker training** |
| **M1.9** | Training and standardisation materials, where required, will be developed by the Lead or Deputy Lead markers / coders. For Trialling this will be in consultation with Test development researchers at DfE. The Supplier may be required to manage LMs and DLMs, providing them with support and guidance, in order to develop (for example): * Training (T) Materials;
* Practice (P) Materials and associated commentaries (as required);
* Standardisation (S) Materials and associated commentaries; and
* On-going Marking / Coding Quality Assurance (QA) Materials.

For Sampling, the development process managed by the Supplier must include opportunity for expert input to be provided by DfE and their appointed representatives and include a robust User Acceptance Testing (UAT) process, to ensure the materials are fit for purpose. The Supplier must ensure that all T, P, S and QA materials are of the nature, in the format, quantity and to the quality standards agreed with DfE. The Training Material format must match the proposed method of training delivery. Coding frame commentaries must be developed to provide details of the coding frame justification for that code for every Item in the T, P, S and QA materials, to ensure that consistent feedback is given by Lead or Deputy Lead Markers / Coders. P, S and QA materials must be completed by Markers / Coders in the same marking / coding unit (Item / Item Group / Component / Test Script) and mode of marking / coding (Paper Based or OSM) as Sampling marking / coding will be completed for the Test. |
| **M1.10** | The Supplier must ensure an early sample of Trial / Sampling scripts is made available in either the OSM system or in paper-based format as specified in each call-off for Lead or Deputy Lead Markers / Coders to undertake pre-marking / coding, to support the development of training, standardisation and on-going marking / coding quality assurance materials. **The OSM system must allow for marks from the pre-marking / coding activity to be cleansed or retained (as specified by DfE), after pre-marking / coding.** Where marks are cleansed the responses will be returned to the pool of marking / coding for inclusion in the main Trial / Sampling marking / coding. **The OSM system must allow standardisation script selection to take place from this pool of early scripts, and that the marks for the standardisation scripts to be saved.** |
| **M1.11** | Lead or Deputy Lead markers / coders will be required to train groups of markers / coders on the training day. The Supplier must produce guidance (agreed with DfE) for the Lead or Deputy Lead Markers / Coders to enable them to deliver training to, support and manage the Marker Pool. Where marking / coding is to take place onscreen, Lead or Deputy Lead Markers / coders must receive training on the use of the OSM System to perform their supervisory duties. |
| **M1.12** | The Supplier must ensure markers / coders are invited to and attend the training event for the subject / Trial / Sampling test versions that they are marking / coding. The Supplier must send out invitations to Markers / Coders, DfE and its nominated representatives to attend all meetings / Training Events sufficiently in advance to allow for travel and other arrangements to be made. DfE representatives will attend each marker training day in order to provide advice to lead markers / coders and their groups.The Supplier must ensure that at the beginning of each Training Event all attendees are reminded of security and confidentiality obligations, as per the contracts with Markers / Coders. The Supplier must provide DfE with an audit summary / report of this if requested. In addition, the Supplier may be required to hold non test specific marker training days to emphasize the differentiated skills required for trial marking / coding compared with live test marking / coding. Training on the Suppliers’ onscreen marking / coding system could be part of the training on the non-test specific training day, if required. Training content would need to be agreed with the DfE. The Supplier will need to organise a suitable venue for the non-test specific marker training day. |
| **M1.13** | As outlined in M1.9 all materials for markers / coders will be produced as a result of discussions with the senior marking / coding team and the Test development researchers at DfE. Materials will either be handed over to the Supplier prior to the marker training meeting for copying / printing and labelling / numbering for the marker training meeting **or** will be provided by DfE at the training meeting. Required timelines and details will be specified in the call-off. The exact materials required for marker / coder training will depend of the nature of the call-off. This would typically be a copy of the coding frame, training scripts and / or exemplar responses and a questionnaire per marker / coder. Print quality must not inhibit markers’ / coders' ability to mark test scripts consistently and accurately. Following any Sampling or Trial administration, materials assigned to markers / coders will either need to be returned or securely destroyed. Where training and marking / coding materials are required to be returned; they will need to be numbered so that all materials can be tracked and signed off when returned. Proof of the return of all materials must be supplied to DfE on request. Where materials can be securely destroyed by markers / coders, they will need to complete a declaration to confirm that the materials have been destroyed in an appropriate way. All materials belonging to the Lead or Deputy Lead markers / coders must be logged and handed over to DfE for archiving purposes. These materials are kept for future reference by the test developers and /or markers/coders. |
|  | **Train markers / coders** |
| **M1.14** | **Event management**The Supplier must source and book venues for all necessary training and marking / coding events.The Supplier shall ensure that venues for training and marking / coding events:* are secure and have secure storage facilities
* have no concurrent bookings which conflict with the use of the venue (e.g. media organisations or other awarding bodies);
* have sufficient administrative staff available
* are accessible for the majority of delegates but public transport and motorway networks.
* comply with disability legislation particularly but not exclusively with respect to accessibility;
* are served by public transport
* have sufficient car parking
* are appropriate for the size, length and purpose of the meeting
* have appropriate and timely catering and refreshments available and
* have affordable nearby overnight accommodation facilities, as required.

The Supplier must provide a list of venues to DfE in advance for approval and facilitate venue visits to support such approval, where requested, and in sufficient time for an alternative venue to be sourced if required. |
| **M1.15** | The Supplier must provide the following services at each meeting / Training Event * Reception, registration and management of Markers / Coders (a record of Marker attendance will be required by the Supplier for the payment of Markers / Coders);
* Photo identification check of all attendees;
* Management of the security of the meeting / Training Event;
* Management of the provision of catering and refreshments;
* Issue of materials (as required); and
* Tamper evident packaging for the transport of secure materials by Markers / Coders.
 |
| **M1.16** | The Supplier must allow nominated representatives of DfE and applicable regulatory and / or stakeholder organisations as invited by DfE to be present at training and marking / coding events (as required). The Supplier must ensure that an agenda, details of the venue and relevant materials are provided to DfE and the nominated representatives on dates to be agreed with DfE. |
| **M1.17** | The Supplier must develop and provide training for Markers / Coders on the use of its OSM or any mark capture System utilised in the process of marking / coding. The format of System training must be proposed by the Supplier for each Trial / Sampling test and is subject to prior approval by DfE but may be: hands on, face-to-face presentation, online, guidance or any combination of these methodologies. Such System training should also take into account the probable mixed experience of Markers / Coders with OSM and thus provide appropriate support to those Markers / Coders transitioning from paper -based to OSM, or from one OSM System to another.**The Supplier must ensure the OSM System and any mark capture System have a 'practice' area which allows Markers / Coders to familiarise themselves with the functionality of the System away from the area containing live Trial / Sampling papers.** |
|  | **Manage test script marking / coding** |
| **M1.18** | The Supplier must ensure that the allocation of test scripts is approximately equivalent (in terms of potential earnings and workload) across all markers / coders, taking into account the time required to mark each subject / Test type and any supervisor responsibilities a marker may also have. The approach to allocations may differ dependent upon whether a home marking / coding or onsite mode of marking / coding is utilised and whether marking / coding is paper based or onscreen. During the marking / coding window, markers / coders who have completed their initial allocation to the required quality standards may be allocated additional test scripts / responses if they confirm they have capacity to mark more.The Supplier must ensure that when allocating to markers / coders, test scripts from a particular school are not allocated to a marker / coder with a declared personal interest in the school. **The OSM system must be able to allocate scripts according to the requirements above.** The Supplier must ensure that the location of all test scripts (including re-allocated test scripts) so that an accurate audit trail is maintained at all times. |
| **M1.19** | **The Supplier must ensure that, where an OSM System is used, it can place a limit on the number of responses to an Item / Item Group / Component / Test Script that a Marker can retrieve for marking / coding. This limit should initially not exceed the standard Marking / Coding Target. The Supplier must ensure the OSM System allows for the adjustment of Marking / Coding Targets, on an on-going basis, to allow Markers / Coders who have passed Standardisation and On-going Marking / Coding Quality Assurance checks, and who have confirmed their capacity to complete additional marking / coding, to retrieve additional marking / coding beyond their initial Marking / Coding Target, where additional marking / coding is available.** The Supplier should provide to DfE a documented process for how Items / Item Groups / Components / Test Scripts’ requiring marking / coding will be released to Markers / Coders, in line with the availability of Marking / Coding Capacity and agreed Business Rules for Allocations and Re-allocations.**For each Test marked via the OSM System the Supplier must ensure the OSM System gives Markers / Coders visibility of their marking / coding progress against the Marking / Coding Target for each Item / Item Group / Component / Test Script which is distributed to them or which they are Allocated.** **Test Scripts should be anonymised of Pupil Data wherever possible**. |
| **M1.20** | **The Supplier must ensure that for all OSM marked Tests all Items / Item Groups / Components / Test Scripts marked by Stopped Markers / Coders have their marks cleansed and that the Items / Item Groups / Components / Test Scripts are returned to the Marking / Coding Pool for another marker to mark.**  |
|  | **Marking / coding quality assurance** |
| **M1.21** | **The Supplier must ensure that there is a mechanism to verify that each marker is consistently and accurately applying the coding frame to test scripts to the agreed standard prior to the marking / coding period.** This mechanism is to be known as ‘Standardisation’. All markers / coders must undertake Standardisation, for each Item / Item Group / Component / Test Script that they will mark, in order to ascertain that they can consistently and accurately apply the coding frame to responses to an agreed standard (tolerances to be proposed by the Supplier for approval by DFE). **Those Markers / Coders that fail to accurately apply the mark scheme / coding frame to the responses in the Standardisation materials to an agreed standard after the permitted number of attempts will not be permitted to mark that Item / Item Group / Component / Test Script and must be stopped from accessing further marking/coding in the OSM system for that Item / Item Group / Component / Test Script.****The Supplier must also ensure that there is a mechanism to verify that each marker is consistently and accurately applying the mark scheme / coding frame to test scripts to the agreed standard throughout the marking / coding period.** This process is to be known as 'Ongoing Marking / Coding Quality Assurance'. The Supplier must propose a process to enable the management of the quality of marking / coding, for approval by DfE before implementation by the Supplier. In addition, the measure(s) of quality and required standard(s) / tolerance(s) for each quality check should be proposed and justified by the Supplier and submitted to DfE for approval prior to implementation by my Supplier.DfE expects that the approach to On-going Marking / Coding Quality Assurance checks will differ between the Supplier’s Paper Based solution and OSM solution. The Supplier will need to justify its approach with respect to both solutions and show that it provides marking / coding of equivalent quality standards across both solutions. **Standardisation and On-going Marking / Coding Quality Assurance checks should be completed using the same mode of marking / coding as the Trialling / Sampling marking / coding**, e.g. for an OSM marked Test the Standardisation and On-going Marking / Coding Quality Assurance Materials must be marked onscreen.The process for monitoring marking / coding performance / accuracy must be detailed to markers / coders prior to marking / coding. |
| **M1.22** | **The Supplier must ensure the OSM system allows for the selection of scanned Test Scripts from the Trial / Sampling administration to be used as Practice, Standardisation or Ongoing Marking / Coding Quality Assurance responses in the system by input of definitive marks for each response.****The OSM system must also allow for images of previously scanned Test Scripts / Items to be introduced into the software for use as P, S or QA items.** E.g. if a standardisation script is provided for the ‘anchor test’ for one Trial, and DfE wish to re-use that paper as an S script for a future Trial the script does not need to be rescanned as the image file can be used. |
| **M1.23** | **The mechanism must allow for identification and totalling of coding errors for P, S and QA materials**. OSM quality assurance mechanisms must allow for: * the totalling of the number of unique errors made in coding; and
* the totalling of the absolute mark difference variance between each mark and the definitive mark for that item (marking only).

**The Supplier must ensure that the OSM System (where used) enables the following targets and tolerances to be configured for all Markers / Coders and that these targets and tolerances may differ across sub-groups of Markers / Coders, by Marker / Coder Rank and / or by Test. Furthermore the OSM System must also allow for the following targets and tolerances to be adjusted during the Marking / Coding Period:**1. **The number of Item / Item Group / Component / Test Scripts a Marker must code as part of Standardisation and On-going Marking / coding Quality Assurance;**
2. **The tolerances applied to each of the individual Standardisation and On-going Marking / Coding Quality Assurance Items / Item Groups / Components / Test Scripts as well as for each S or QA set;**
3. **The number of attempts at Standardisation permitted and the frequency of On-going Marking / Coding Quality Assurance checks; and**
4. **The Agreed codes for a Standardisation or QA Item**.

**Where there are common Items / Item Groups between different test papers the Supplier must ensure the OSM system allows for a marker to be allocated to an Item / Item Group across all test papers, but only to be required to Standardise once for that Item / Item Group and then be approved to mark the Item / Item Group across all test papers.** |
| **M1.24** | **The Supplier must ensure that Markers / Coders pass Standardisation to an agreed quality (i.e. within the agreed tolerance approved by DfE) are then authorised to start marking / coding by the system. Markers / Coders who fail the permitted opportunities to pass Standardisation become Stopped Markers / Coders.** The outcomes of Standardisation for each Marker must be recorded in the Marker Register. **The Supplier must ensure that Markers / Coders who fail On-going Marking / Coding Quality Assurance checks are denied further access to the Mark Capture Mechanism or OSM System, once they become Stopped Markers / Coders and that the Test Scripts of such Stopped Markers / Coders are retrieved (Paper Based) or their marking / coding is cleansed from the System in respect of OMS.**The Supplier must establish and actively manage the process to ensure that all Markers / Coders complete On-going Marking / Coding Quality Assurance checks at the appropriate frequency in the Marking / Coding Period, and within the quality standards agreed with DfE, before being allowed to submit further marks for Test Scripts. |
| **M1.25** | **The Supplier must maintain a database of all item level data and overall outcomes from Standardisation and Ongoing Marking / Coding Quality Assurance checks for each marker, which is provided to the DfE at the end of the marking / coding period**. The Item-level data for each Marker should be provided to DfE along with a data file containing the Agreed Mark for each Item in the Standardisation and On-going Marking / Coding Quality Assurance Materials, and any supporting documentation to support clear understanding of the structure and nature of the data.**The Supplier must provide a process that allows Lead or Deputy Lead Markers / Coders access to information related to the completion of Standardisation and On-going Marking / Coding Quality Assurance Materials in respect of Markers / Coders within their allocated team.** This is in order to allow the Lead or Deputy Lead Markers / Coders to provide mentoring and support to Markers / Coders in the application of the mark scheme / coding frame.  |
| **M1.26** | The Supplier must ensure that all markers / coders are monitored throughout the marking / coding period to ensure that quality assurance and marking / coding deadlines are met and all necessary activities are completed to agreed milestones.  |
| **M1.27** | The Supplier must ensure that all markers / coders, regardless of whether they pass or fail, are provided with feedback on their application of the coding frame during the standardisation period and any ongoing marking / coding quality assurance processes. The Supplier should ensure that feedback given to markers / coders is consistent. |
| **M1.28** | The Supplier must keep DfE informed of the outcomes of standardisation and ongoing marking / coding quality assurance checks for all markers / coders and communicate any changes in the marker pool and to marking / coding capacity to DfE. The Supplier must monitor the outcomes of standardisation and ongoing marking / coding quality assurance checks, discuss any emerging issues with DfE and agree planned interventions if marking / coding capacity is significantly reduced. |
| **M1.29** | The Supplier must provide a transparent and fair mechanism for the assessment of a marker's marking / coding quality at the end of a marking / coding period, to inform future marker recruitment. The mechanism for assessing marker quality should be outlined in the marking / coding plan, described in M1.7 and made clear to markers / coders prior to the start of marking / coding. |
|  | **Managing marking / coding progress** |
| **M1.30** | For larger scale Trialling / Sampling marking / coding periods, the Supplier must establish milestones in the marking / coding period and provide forecasts of marking / coding completion plotted against time over the marking / coding period.These milestones must be of sufficient frequency to ensure the completion of marking / coding within the marking / coding period and provide early indication of any potential slippage.  |
| **M1.31** | The Supplier must ensure that markers / coders are provided with deadlines, in their contract and guidance documentation, that relate to the progress milestones within the forecast for marking / coding completion, within the marking / coding period.The Supplier must ensure an effective and accurate mechanism for measuring individual marker's progress against milestones. The mechanism should also permit Lead or Deputy Lead markers / coders access to marking / coding progress data for markers / coders under their supervision.The Supplier should chase markers / coders whose progress falls behind agreed deadlines and, where necessary, must retrieve and re-allocate unmarked test scripts to ensure that all marking / coding is completed according to agreed deadlines. |
|  | **Script Receipt, Scanning, Matching and Script Storage** |
| **M1.32** | Prior to Scanning (OSM) or marking / coding (Paper Based), the Supplier must provide a process which enables the Supplier to: 1. confirm that all expected Components of a Pupil's Test Script are present and in good order (when compared to the Attendance Record for the Pupil);
2. record, at Component level, where a Test Script is missing, partly missing or defaced;
3. add Pupils to the list of registered Pupils for a School where a Test Script has been received at the Scanning facility for an unregistered Pupil, or make corrections where the Test Script and Attendance Record do not exactly match; and
4. resolve either of the situations described in points 2 or 3 above with Schools / Administrators before making corrections.

The process must record an audit trail of all changes to the Attendance Record. |
| **M1.33** | The Supplier must define a process, and provide a mechanism to scan Test Scripts and associated Test materials (for example Attendance Capture Mechanisms, additional sheets used by pupils and Access Arrangement notification forms) to support the OSM Solution. All Scanning must be carried out in accordance with the Cabinet Office SPF. |
| **M1.34** | The Supplier must provide to DfE for agreement a test paper design and manufacturing specification (including print requirements) for use in the test paper design and print processes, which will ensure that all test papers and associated barcodes produced in line with the specification, can be scanned. Any scanning specification must be realistic in terms of the degree of precision that can be achieved in large-scale printing processes.The Supplier must be able to define any quality assurance checks required in advance of scanning to provide confidence in the scanning solution, the specification of the materials required for those checks and the timeline for the checks, taking into account the availability of test materials before printing. The Supplier should also provide a detailed statement outlining the purpose and outcome of those checks. |
| **M1.35** | During Set-Up and mobilisation stage for each Trial / Sampling administration, the Supplier must also agree with DfE any specification for Attendance Capture Mechanisms, and any other supporting documents, which they will produce and scan. |
| **M1.36** | The Supplier must provide Scanning and Matching progress profiles for the completion of the accurate Scanning and Matching of all Test Scripts and associated materials to Pupil Data, plotted against time elapsed. The Scanning and Matching progress profiles must be agreed with DfE before Scanning and Matching commence for each Trial / Sampling administration. The Supplier must then meet or exceed the profiles agreed with DfE. The Supplier must ensure the Scanning and Matching profiles take into account the anticipated and required rates of marking / coding in order to ensure that during the Marking / Coding Period Items / Item Groups / Components / Test Scripts are continually readily available for marking / coding to all Markers / Coders at all times; until Markers / Coders reach their individual Marking / Coding Targets or all Test Script marking / coding is complete. |
| **M1.37** | The Supplier must provide a mechanism to ensure the accurate Matching of scanned Test Script images to the list of pupils and capture of Pupils’ Attendance Record. The Matching process must be carried out in accordance with the Cabinet Office SPF, Data Protection Legislation and the business rules for Matching Test Script images to Pupil Data, which must be proposed by the Supplier and agreed with DfE.  |
| **M1.38** | The Supplier must provide a mechanism to ensure that accurate Pupil Data is gathered, captured and matched to its corresponding Test Script image(s), where a record does not exist in the list of pupils supplied by DfE. |
| **M1.39** | The Supplier must ensure secure storage of all Test Scripts and associated Test Materials both during and after Scanning in line with the latest version of the Cabinet Office SPF. The Supplier must ensure all Test Scripts and associated Test Materials are readily available both in hard and soft copy; and stored in a manner that will enable prompt retrieval for processing of queries that may arise during the Test Cycle. The duration of secure storage for hard and soft copies of Test Scripts must be agreed with DfE. Depending upon the volume of Test Scripts processed and the duration of storage, prior to return to DfE or secure destruction, the Supplier may transfer the Test Scripts to a secure storage facility where the Test Scripts may still be accessed within no more than five Business Days. The Supplier must ensure that any Sub-contractor engaged in providing this aspect of the Service is BS/ISO 27001 accredited or working towards accreditation for Scanning and storage operations.  |
| **M1.40** | The Supplier shall return indexed pdfs of all Script Booklets to the DfE on termination or expiry of the Framework Agreement or on request at the end of any Call Off order, in the manner determined by DfE. The archive will be indexed by a reference agreed by the Supplier with DfE e.g. item code.The OSM system should also allow for a report to be produced which provides images of all responses (and associated messages) for all Items / Test Scripts requested by question number, code assigned, mark assigned, marker / coder, or other variable specified by DfE and agreed by the Supplier. |
|  | **Onscreen marking / coding mechanism** |
| **M1.41** | **The Supplier must ensure the OSM solution(s) enable Markers/ Coders to undertake the marking/coding of OSM Test Scripts electronically onscreen from their homes, or at a central marking / coding location via a secure internet connection.** The Supplier must ensure the specification a Markers’ / Coders’ home personal computer must meet, is provided at the time of the acceptance of the Marker / Coder Contract, and is then not updated during the Test Cycle such that previously accepted technology is no longer compatible with the Mark Capture or OSM Solution (as applicable).The specification for Markers / coders’ laptops or home computers is able to be met by the majority of people with a laptop or home computer and be able to work via the connectivity typically found to 95% of the homes in the UK.   |
| **M1.42** | **The Supplier must ensure the OSM System captures Item level data for each Test Script, including Unscannable Test Scripts. The OSM System must also aggregate all Item marks for a Test Script to calculate a total Test Script mark. The OSM System should also be able to capture a valid Attendance Code for a Pupil where no Test Script has been presented for marking / coding.**  |
| **M1.43** | **The Supplier must ensure that the OSM System includes a process for the handling of Unscannable Test Scripts (for example enlarged print, modified large print or Braille Test Scripts) or Test Scripts where the Pupil’s response is un-readable once scanned. The process must allow these Unscannable Test Scripts to be made available to Markers / Coders for marking / coding and to permit electronic Mark Capture for these Test Scripts.** |
| **M1.44** | **The Supplier shall ensure that the OSM System provides a mechanism for Double or Multiple Marking / Coding and Re –marking / coding at Item, Item group Component and / or Test Script level.** **The double / multiple marking / coding mechanism should allow for double / multiple marking / coding to be focused according to parameters such as particular codes, or at a specified frequency (e.g. percentage).** **The Supplier shall ensure that the Software provides a mechanism for storing and providing access to DfE to all sets of marks generated from double / multiple marking / coding and Remarking / coding.** **The double / multiple marking / coding mechanism must include an adjudication function.** **Where double or multiple marking / coding has been used, the Supplier shall ensure that the Software is able to generate a final mark based on results generation rules supplied by the Authority**  |
| **M1.45** | **The Supplier shall ensure that the OSM System allows for automatic marking / coding of multiple choice and / or some selected response items, according to business rules agreed with DfE.**  |
| **M1.46** | **The Supplier must ensure that the OSM System and Mark Capture Mechanism (where applicable):** 1. **have the facility to set up multiple Tests for each Test Cycle, with no limit on the concurrency of marking / coding for multiple Tests;**
2. **allow each Test to include at least three Component papers;**
3. **be able to allocate responses or Papers randomly and anonymously to markers / coders;**
4. have tested capability to efficiently process the volumes of School, Pupil, Marker and Mark data required for the provision of the Service;
5. **are capable of allowing two or more separate Mark Points / codes to be captured against each Item;**
6. **allow for Test Scripts to be marked at Test Script, Component, Item or Item Group level** (OSM only) and allow for the allocation of Items, Item groups, Components or Test Scripts to different groups of Markers / coders, for example, for clerical or expert marking / coding or to individual named Markers / Coders;
7. **manages the number of test scripts a marker can access at any one time, and the total allocation they can access for an item, both of which can be adjusted during the marking / coding process;**
8. **allows a marker / coder to save their marking / coding for review before submission (up to a defined number of scripts) and allows markers / coders to go back and change their marks for a defined (configurable) period after submitting marks;**
9. **are able to capture whether an Item has not been attempted as opposed to scoring zero;**
10. **are capable of allowing codes (which maybe numeric or letter based) to be awarded as well as marks;**
11. **are capable of mapping the codes assigned by markers / coders to another value in the database e.g. code A = 1;**
12. **are capable of allowing the alteration or addition of codes to the list of acceptable codes provided for an item, following set up of the system but prior to the commencement of live marking / coding (following pre –marking / coding);**
13. **record the date and time that each item of mark data is submitted by a Marker;**
14. **remove all Marks entered by a Stopped Marker so that their marks are not visible to the Re-allocated Marker(s);**
15. **provide a full audit trail on the marking / coding of each Item and produces accurate data on the marking / coding completed by individual Markers / Coders, for the purpose of administering payments to Markers / Coders;**
16. **allow individual Markers / Coders or a defined sub-group of Markers / Coders to mark any number and combination of Tests, Components, Items or Item Groups, once trained and passed Standardisation;**
17. **allow for the conduct of the agreed Standardisation and Ongoing Quality Assurance processes;**
18. **allow appointed markers / coders to set Definitive Marks for Standardisation and Items selected for the Ongoing Quality Assurance processes, Item groups and Papers;**
19. **In Trial / Sampling booklets, an item may appear in more than one booklet. The OSM solution should allow a marker to Standardise once for each item, with approval to mark being applied across that item in all booklets;**
20. **be able to accommodate changes to Definitive Marks for Standardisation and Ongoing Quality Assurance Items made once marking / coding is underway;**
21. **allow for Markers / Coders to be set up in line with the proposed Marker / Codes Hierarchy, the Supplier must ensure the solution does not limit the extent of the Marker / Coder Hierarchy, DfE anticipates the solution may need to accommodate up to five tiers of Marker / Coder Rank;**
22. **allow for DfE and other nominated markers/coders to be set up in the Marker Hierarchy, and have the same overview of messaging, marking / coding and reports as a Lead Marker / Coder, but without superseding their supervisory role;**
23. **are able to support the division of Markers / Coders into teams managed by a Lead or Deputy Lead Marker / Coder (or any other supervisory model the Supplier proposes as approved by DfE);**
24. **allow for the movement of Markers / Coders within the Marker / Coder Hierarchy across teams and Marker / Coder Ranks;**
25. **allow for the removal of Stopped or Withdrawn Markers/coders in accordance with the agreed procedures;**
26. **allow each Lead or Deputy Lead Marker / Coder to view the marking / coding, Mark Capture and Management Information relating to both their direct and indirect subordinate Markers / Coders, but not their peers or Supervisor;**
27. **allow each Lead or Deputy Lead Marker / Coder to permit any direct sub-ordinate Marker to review the Supervisors Marking / Coding (OSM only);**
28. **allow the image displayed for the marking / coding of each Item to be set as a defined image zone(s) on a Test Paper page(s) by the Supplier, and for the image zone(s) to be amended during the Marking / Coding Period (OSM only);**
29. **allow Markers / Coders the option to view the rest of the page / Test Script (excluding any pages containing Pupil Data) outside of the defined image zone(s) when marking / coding, in order to view any creditworthy response that may fall outside the image zone set up by the Supplier (OSM only);**
30. **allow Markers / Coders to view all of their previously marked Items / Item groups / Components / Test Scripts for reference;**
31. **allow Markers / Coders to adjust marks / codes for submitted responses, within agreed timelines / parameters agreed with DfE;**
32. **have the technical tools (for example, a ruler, protractor, and the facility to create overlays) to enable the accurate marking / coding of mathematical / scientific Test Items, such that Test content is not limited by the technical solution (OSM only).**
33. **have a mechanism to allow markers / coders to identify responses that may be useful to ongoing test development. Those responses should be able to be categorised in a way that is useful for test development processes; for example, response unclear how to mark, for marker training, for mark scheme development etc.**
 |
| **M1.47** | **The Supplier must ensure that the Mark Capture and OSM solution(s) have facilities for the Supplier and DfE nominated representatives to send messages securely within the system to all Markers / Coders, to an individual Marker, to Markers / Coders of a specific Test / Component / Item Group / Item, to Markers / Coders in a specific team or of a specific Marker / Coder Rank. The Mark Capture and OSM solution(s) must enable configurable categorisation of message / query types within the system (e.g. responses suitable for training, for coding frame exemplars etc.). The message format must allow for free comment as well as categorisation of message / query type. Generate reports showing , for example, responses, question number and marker comment and code awarded and be available throughout the marking / coding period. The OSM system should have some capacity to specify reports depending on what information is required.** **The Supplier must ensure that the Mark Capture and OSM solution(s) have the facilities to make any messages mandatory for Markers / Coders to read at the time of log on.** **The Supplier must ensure the messaging system allows for Lead or Deputy Lead Markers / Coders to send messages to their respective team, and DfE nominated representatives, and for Markers / Coders or DfE representatives to respond to messages. Where a marker has a linked query, the system must allow for those queries to be linked in the messaging system – e.g. allow for a chain of messages rather than a need to raise a new query for each response.****The Supplier must ensure the messaging system allows for Markers / Coders and Lead or Deputy Lead Markers / Coders allows for markers / coders to send messages with reference to a particular response they are marking / coding in the OSM solution and for the script to be easily accessed, possibly through a link.** |

**Section 4: Optional Services**

The following services may form part of future call-offs under this Framework, although DfE reserves the right to procure these services through existing Frameworks and agreements with other suppliers.

**PL2 Printing**

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| --- | --- |
| **No** | **Requirement** |
| **PL2.1** | **Print quality and requirements**The Supplier must print materials to the quality required, as defined below. Any variations to these specifications may be required in individual call-offs and will be identified at that point.* In most cases, materials for Trialling / Sampling will be printed in black and white. Covers for booklets may need to be printed on coloured paper to aid the management of Trial administration. The colour of covers must take into account the method of data capture. Alternatively, the Supplier can choose to print in digital to support the supply of variable data and colours to covers.
* Booklets are A4 in size and should be collated.
* Braille and modified versions of materials

The Supplier will deliver 100% of all printed material specified in the call-offThe Supplier will provide supporting documentation as to the quality assurance accreditation they have achieved or are working towards.  In the absence of any formal accreditation, the Supplier shall provide in written submission internal procedures that can be presented to demonstrate adherence to the principles in all, or most of the ISO 9001: 2000 Quality Management System.The Supplier will implement and maintain a quality assurance process for each product stream, and this shall be agreed with the DfE as part of any call off order. * To assure DfE of quality of the final production of any item DfE will require the supplier to present 10 copies for the first 100, 10 from the mid-range and 10 from the last 500. These copies will be time stamped and presented to DfE prior to final dispatch.
 |
| **PL2.2**  | **Variable data requirements**To support Marking / Coding solutions in any one call-off DfE may require Test materials to be personalised to some degree from data and artwork supplied. This could range from but is not exclusive to;1. The application of a variable barcode to front cover only
2. The application of a variable barcode, school and pupil data to front cover only
3. The application of a variable barcode, school and pupil data to front cover and variable barcode to all other pages
4. Full variable artwork and data for each booklet in any one suite of materials

DfE will Require that the supplier provide for assurance the variable data use and merge process 1. Data dump and data count checks to be agreed with DfE for each call off
2. PDF proof – range to be agreed for each call off
3. Sample packs for sign off – number to be agreed for each call off
4. Seeded copies – produced at regular intervals in each production run – archaism to be agreed for each call off
5. Barcode quality is assessed by DfE as follows A, B & C = Pass D&F = Fail. – the supplier will provide reports for DfE assurance on the quality of barcode through the production run.
 |
| **PL2.3** | **DfE and Downstream supplier specification** DfE may at some point require the Supplier to prepare material in line with specific requirements for any one specific programme and or of downstream suppliers. In such a case, the Supplier would be required to provide assurance in response to any specification provided by DfE. This will be specified in a call-off as required. |

**Schedule 2 - Charges and Payments**

1. **Charges**
	1. Charges will be based on the pricing templates submitted for accepatance on to the framework and individual Call Offs.
2. **Schedule of Payments**
	1. The Payment Schedule will be shown in each Call-Off Contract.
	2. Funds allocated to a particular expenditure heading in the Payment Schedule are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only. The allocation of funds in the Payment Schedule may not be altered except with the prior written consent of the Department.
	3. The Supplier shall maintain full and accurate accounts for the Service against the expenditure headings in the Payment Schedule. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Agreement. Input and output VAT shall be included as separate items in such accounts.
	4. The Supplier shall permit duly authorised staff or agents of the Department or the National Audit Office to examine the accounts at any reasonable time and shall furnish oral or written explanations of the account if required. The Department may have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Supplier has used the Department's resources in the performance of this Agreement.
3. **Invoicing**
	1. Invoices shall be prepared by the Supplier monthly in arrears and shall be detailed against the expenditure headings set out in the Payments Schedule. The Supplier or his or her nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Supplier on the Service in accordance with the Agreement and that the invoice does not include any costs being claimed from any other body or individual or from the Department within the terms of another contract.
	2. Invoices should be sent within 30 days of the end of the relevant month to: Department for Education, PO Box 407, SSCL, Phoenix House, Newport NP10 8FZ.
	3. The Supplier shall ensure that its invoices contain the following:
		1. a unique invoice number;
		2. the Service(s) provided to which the relevant Charge(s) relate;
		3. the Agreement reference number;
		4. the Call-Off Contract reference number;
		5. the dates on which the Services to which each of the invoiced Charges relate were performed;
		6. the methodology applied to calculate the Charges;
		7. the total Charges gross and net of any applicable deductions and, separately, the amount of any disbursements properly chargeable to the Department under the terms of the Agreement;
		8. details of any service credits or delay payments or similar deductions that shall apply to the Charges detailed on the invoice;
		9. reference to any reports required by the Department in respect of the Services to which the Charges detailed on the invoice relate (or, in the case of reports issued by the Supplier for validation by the Department, to any such reports as are validated by the Department in respect of the Services);
		10. the Supplier’s full address, VAT number (if applicable) and the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
	4. Each invoice shall at all times be accompanied by sufficient information (including any relevant Management Information) (“**Supporting Documentation**”) to enable the Department to reasonably assess whether the Charges detailed thereon are properly payable. Any such assessment by the Department shall not be conclusive. The Supplier undertakes to provide to the Department any other documentation reasonably required by the Department from time to time to substantiate an invoice.
	5. The Supplier shall submit all invoices and Supporting Documentation in such format as the Department may reasonably specify from time to time with a copy (including any Supporting Documentation) to such other person and at such place as the Department, acting reasonably, may notify to the Supplier from time to time.
	6. All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Department in writing.
	7. The Supplier shall submit its invoice for the Charges in respect of all the Service Elements which are due prior to the Service Element for Administration of the Trial after the successful completion of all such Service Elements.
	8. The Supplier shall submit its invoice for the Charges in respect of all of the remaining Service Elements after the successful completion of all such Service Elements.
	9. Service Elements are only successfully completed when Acceptance has taken place in respect of those Service Elements in accordance with Clause 34 (Acceptance Testing).
	10. The Supplier shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in the Department's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Department shall only be liable to reimburse so much (if any) of the expenditure disallowed as, in the Department's reasonable opinion after consultation with the Supplier, would reasonably have been required for that purpose.
	11. If this Agreement is terminated by the Department due to the Suppliers insolvency or default at any time before completion of the Service, the Department shall only be liable under paragraph 1 of this Schedule 2 to reimburse eligible payments made by, or due to, the Supplier before the date of termination.
	12. On completion of the Service or on termination of this Agreement, the Supplier shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Service. The final invoice shall be submitted not later than 30 days after the date of completion of the Service.
	13. The Department shall not be obliged to pay the final invoice until the Supplier has carried out all the elements of the Service specified in the relevant Call-Off Contract.
	14. It shall be the responsibility of the Supplier to ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the Department all amounts due to be reimbursed under this Agreement shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.
4. **Taxation**
	1. All amounts payable by the Department to the Supplier stated in this Agreement are inclusive of VAT where applicable. Without prejudice to the foregoing, to the extent that any amount payable under this Agreement is consideration for a supply made by the Supplier to the Department and the Supplier is required to account to a taxation authority for VAT on that supply, then the Supplier shall, on demand from the Department, issue a valid VAT invoice to the Department for its records.
	2. Where any payment is made under this Agreement pursuant to an indemnity, compensation or reimbursement provision and that sum is subject to a charge to taxation in the hands of the Department the sum payable shall be increased to such sum as will ensure that after payment of such taxation (which for this purpose shall include the utilisation of any tax relief) and after giving credit for any tax relief available in respect of the matter giving rise to the payment the Department shall be left with a sum equal to the sum that it would have received in the absence of such a charge to taxation.

**Schedule 3 – Form of Call-Off Contract**

|  |
| --- |
| **Trialling and Sampling Framework Agreement – STA 0090** |
| **Call-Off Contract No:** |
| **Title:** |

**Pursuant to the terms of the Trialling and Sampling Framework Agreement (STA 0090):**

|  |  |
| --- | --- |
| **Service Commencement Date:** |  |
| **Call Off Value:** |  |
| **Trial Type:** |  |
| **Relationship Manager for Department for Education:** |  |
| **Relationship Manager for the Supplier:** |  |

1. **Background**

[Insert]

1. **Functional Requirements**

|  |  |
| --- | --- |
| **Subjects:** |  |
| **Level (or Other Measure) Assessed:** |  |
| **Key Stage or Other Measure:** |  |

1. **Required Service Elements**

The table below sets out which Service Elements the Supplier shall provide under this Call-Off Contract.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **KEY:** | Included in trial | ✓ | Not included in trial | X |

| **Service Element** | **Included / not included** | **Service Element Requirements** |
| --- | --- | --- |
| Drawing the sample |  | As per requirements set out in Invitation to Quote |
| Recruiting schools |  | As per requirements set out in Invitation to Quote |
| Recruit and train administrators |  | As per requirements set out in Invitation to Quote |
| Collation and distribution |  | As per requirements set out in Invitation to Quote |
| Administration of trial |  | As per requirements set out in Invitation to Quote |
| Handling pupil data |  | As per requirements set out in Invitation to Quote |
| Marking |  | As per requirements set out in Invitation to Quote |
| Script management during marking |  | As per requirements set out in Invitation to Quote |
| Data capture of test scripts |  | As per requirements set out in Invitation to Quote |
| Data capture and analysis of questionnaires |  | As per requirements set out in Invitation to Quote |
| Trial administration report |  | As per requirements set out in Invitation to Quote |
| DTP/publishing |  | As per requirements set out in Invitation to Quote |
| Printing |  | As per requirements set out in Invitation to Quote |
| Return of results to schools |  | As per requirements set out in Invitation to Quote |
| Incentives |  | As per requirements set out in Invitation to Quote |

1. **Performance Requirements**

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Service Element** | **Performance Requirement** | **Performance Measure** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

1. **Payment Milestones**

Payment will follow the completion of the milestones listed below:

|  |  |  |
| --- | --- | --- |
| **Payment %** | **Activity (see deliverables and outputs table section 1.b of ITQ for further detail)** | **Payment due date** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

1. **Charges**

The Supplier shall be entitled to invoice the Department for Education for the Charges in accordance with the following timetable:

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Deliverables** | **Payment Due** | **Charge (£GBP) including VAT** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

1. **Contract Management Arrangements**

|  |
| --- |
|  |
|  |
|  |

**In witness** whereof this Call-Off Contract has been duly executed.

|  |
| --- |
| Signed for and on behalf of the Department for Education: |
| Date: |

|  |
| --- |
| Signed for and on behalf of the Supplier: |
| Date: |

**Schedule 4 – Governance and Performance Monitoring**

1. **Service Management**
	1. The Supplier must demonstrate that, where there are plans to use a Subcontractor, the Subcontractor is reliable, available and can meet the obligations imposed on the Supplier under this Agreement. The Supplier must provide and maintain details of who these resources are, how they will be used and how they will be managed. The Supplier will provide the Department with its procurement strategy and selection criteria for all services which they intend to Subcontract. The Supplier will advise the Department of the progress of its procurement activities against the agreed plan and inform the Department of the nominated preferred bidder prior to contract award.
	2. The Supplier must adopt quality standards across the range of activities and requirements in the Services. Quality should be built in from the start, not 'tested in' later. Relevant standards might include, but are not limited to, British or International standards in areas such as information security and quality management.
	3. The Supplier must ensure that all project staff engaged in the delivery of the Services have a level of knowledge of the contractual terms and conditions commensurate with the level of their responsibility and involvement.
	4. The Supplier shall nominate a quality manager who will act as the point of contact for quality issues and enforce a quality assurance methodology
2. **Management Information**
	1. Management Information to be provided shall be specified in the relevant Call-Off Contract.
	2. In addition, the Supplier must:
		1. provide ad hoc information and/or reports as required by the Department;
		2. provide Management Information within timescales and frequencies agreed with the Department to monitor system performance, availability and demand of take up of system functionality and reassure the Department of proper performance; and
		3. provide access to the Department of the source data from which Management Information is generated
3. **Contract Management Reviews**
	1. The Supplier shall be fully engaged on an on-going basis in regular Contract Management Reviews. These reviews provide an opportunity for the Department and the Supplier to discuss the end-to-end delivery of the Services which shall include but not be limited to:
		1. planning;
		2. progress;
		3. risk management;
		4. issue management;
		5. continuous improvement;
		6. proposed changes;
		7. lessons learnt;
		8. exit management.
	2. The specific requirements for contract reviews shall be stated in the Call-Off Contract.

**Schedule 5 – Change Control Procedures**

1. **Principles**
	1. The Agreement and Call-Off Contracts may be changed only in accordance with the Change Control Procedure as set out in this Schedule 5.
	2. Neither Party shall unreasonably withhold its agreement to any change.
	3. Until such time as a change is made in accordance with the Change Control Procedure, the Supplier shall, unless otherwise agreed in writing, continue to supply the Services as if the request or recommendation had not been made.
	4. Any discussions which may take place between the Parties in connection with a request or recommendation before the authorisation of a resultant change to the Services shall be without prejudice to the rights of either Party.
	5. Any work undertaken by the Supplier, its Subcontractors or agents which has not been authorised in advance by a change to the Services and which has not been otherwise agreed in accordance with the provisions of this Schedule 5 shall be undertaken entirely at the expense and liability of the Supplier.
2. **Procedures**
	1. Discussion between the Parties concerning a change to the Services shall result in any one of the following:
		1. no further action being taken;
		2. a request to change the Services by the Department; or
		3. a recommendation to change the Services by the Supplier.
	2. Where a written request for an amendment is received from the Department, the Supplier shall, unless otherwise agreed, submit a CCN to the Department within 2 weeks of the date of the request.
	3. A recommendation to amend by the Supplier shall be submitted as a CCN direct to the Department at the time of such recommendation.
	4. A model CCN is provided at Annex 1 to this Schedule 5.
	5. Each CCN shall contain:
		1. the title of the change;
		2. the originator and date of the request or recommendation for the change;
		3. the reason for the change;
		4. full details of the change including any specifications;
		5. the price, if any, of the change;
		6. a timetable for implementation together with any proposals for acceptance of the change;
		7. a schedule of payments if appropriate;
		8. details of the likely impact, if any, of the change on other aspects of the Services;
		9. the date of expiry of validity of the CCN; and
		10. provision for signature by the Department and by the Supplier.
	6. For each CCN submitted the Department shall, within the period of the validity of the CCN:
		1. allocate a sequential number to the CCN;
		2. evaluate the CCN and, as appropriate;
		3. request further information;
			1. approve the CCN; or
			2. notify the Supplier of the rejection of the CCN; and
		4. arrange for two copies of an approved CCN to be signed by or on behalf of the Department and the Supplier.
	7. A CCN signed by both parties shall constitute an amendment to this Agreement pursuant to Clause 14.

**Schedule 5 – Annex 1 – Change Control Note**

|  |
| --- |
| **CHANGE CONTROL NOTE – No** [To be allocated by the Department] |
| **Agreement name & No**: |  |
| **Originator:** |  |
| **Date of CCN:** |  | **Expiry date:** |  |
| **CCN Title** |  |
| 1. **Reason for change:**
 |
|  |
| 1. **Details of change (including specification where appropriate):**
 |
|  |
| 1. **Price (if appropriate) to include cost breakdown and payment schedule:**
 |
|  |
| 1. **Implementation timetable:**
 |
|  |
| 1. **Impact of the change on the Services:**
 |
|  |
| 1. **Required changes to the Agreement (Clauses and Schedules):**
 |
|  |
| 1. **Authorised to sign for and on behalf of the Supplier:**
 |
| Signature: |  |
| Name in CAPITALS: |  |
| Position in Organisation: |  |
| Date: |  |
| 1. **Authorised to sign for and on behalf of the the Department for Education:**
 |
| Signature: |  |
| Name in CAPITALS: |  |
| Position in Organisation: |  |
| Date: |  |

**Schedule 6 – The Departmental Dependencies**

1. **Dependencies**
	1. The Department acknowledges that the Supplier is dependent on the Department carrying out the actions in paragraph 1.2.
	2. The Department will:
		1. supply access to their secure collaboration site for the exchange of confidential data and documents;
		2. maintain regularly update a decision log throughout each Call-Off Contract;
		3. organise regular project management meetings during the course of each call-off, on at least a monthly basis, but more commonly weekly. Minutes will be produced and circulated by the Department;
		4. provide a clear trialling model for each Call-Off Contract as part of the tendering process;
		5. provide specifications for the provision of data files by agreed dates;
		6. provide specifications for the production of reports by agreed dates;
		7. agree a schedule at the outset of each Call-Off Contract and will ensure that all deadlines relating to their provision of any aspects of the project are met. In particular, the Department will deliver final copies of test materials by agreed dates;
		8. ensure that final trialling materials are fully quality checked and error free before sending to the Supplier;
		9. apply suitable formatting to any trialling materials to enable the efficient processing of materials by the Supplier which might mean keeping space for bar codes and numbers or applying registration marks to enable data capture (where this is part of the Call-Off Service);
		10. supply any specific batching instructions to the Supplier by agreed dates;
		11. organise regular senior supplier meetings during the course of each call-off. Minutes will be produced and circulated by the Department; and
		12. when sent any confidential material by the Supplier, check that all materials have been received and confirm that to the Supplier on the day of receipt.

**Schedule 7 – Template for Exit Management Plan**

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

1. **Document History (Section 1)**

**Document location**

*[Insert document location details.]*

**Revision history**

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

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

**Required approvals**

*[Insert details of the required approvals.]*

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

**Distribution**

*[Insert distribution list.]*

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

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

Section 1: Document History

Section 2: Purpose

Section 3: Exit Management Structures

Section 4: Required actions

Section 5: Timetable

Section 6: Charging arrangements

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

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

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

**Exit Project Board**

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

**Exit Project Reporting**

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

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

Subsection 4.2: Supplier Assets

Subsection 4.3: Systems and Software

Subsection 4.4: Data

Subsection 4.5: Contracts

Subsection 4.6: Documentation

Subsection 4.7: Training and knowledge transfer

Subsection 4.8: Staff matters

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

**Supplier Assets (Subsection 4.2)**

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

**Systems and Software (Subsection 4.3)**

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

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

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

**Data (Subsection 4.4)**

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

**Contracts (Subsection 4.5)**

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

**Documentation (Subsection 4.6)**

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

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

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

**Staff matters (Subsection 4.8)**

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

1. **Timetable and milestones (Section 5)**

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

1. **Charging Arrangements (Section 6)**

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

**FRAMEWORK SCHEDULE 8 – CALL OFF PROCEDURE**

1. **AWARD PROCEDURE**

1.1 If the Authority or any Other Contracting Authority decides to source the Services through this Framework Agreement then it will award its Services Requirements in accordance with the procedure in this Framework Schedule 5 (Call Off Procedure) and the requirements of the Regulations and the Guidance. For the purposes of this Framework Schedule 5, “Guidance” shall mean any guidance issued or updated by the UK Government from time to time in relation to the Regulations.

1.2 If a Contracting Authority can determine that:

1.2.1. its Services Requirements can be met by the Framework Suppliers description of the Services as set out in Framework Schedule 2 (Services and Key Performance Indicators); and

1.2.2. all of the terms of the proposed Call Off Contract are laid down in this Framework Agreement and the Template Call Off Terms do not require amendment or any supplementary terms and conditions (other than the inclusion of optional provisions already provided for in the Template Call Off Terms);

then the Contracting Authority may award a Call Off Contract in accordance with the procedure set out in paragraph 2 below.

1.3 If all of the terms of the proposed Call Off Contract are not laid down in this Framework Agreement and a Contracting Authority:

1.3.1. requires the Supplier to develop proposals or a solution in respect of such Contracting Authority’s Services Requirements; and/or

1.3.2. needs to amend or refine the Template Call Off Terms to reflect its Services Requirements to the extent permitted by and in accordance with the Regulations and Guidance;

then the Contracting Authority shall award a Call Off Contract in accordance with the Further Competition Procedure set out in paragraph 3 below.

2. **DIRECT ORDERING WITHOUT A FURTHER COMPETITION**

2.1 A Contracting Authority may only award a Call Off Contract for Services under this Framework Agreement without holding a further competition and in accordance with Paragraph 2.2 below where it is no longer than nine months in length.

2.2 Subject to paragraph 1.2 above any Contracting Authority awarding a Call Off Contract under this Framework Agreement without holding a further competition shall:

2.2.1 develop a clear Statement of Requirements;

2.2.2 apply the Direct Award Criteria to the Framework Suppliers description of the Services as set out in Framework Schedule 2 (Services and Key Performance Indicators) for all Suppliers capable of meeting the Statement of Requirements in order to establish which of the Framework Suppliers provides the most economically advantageous solution; and

2.2.3 on the basis set out above, award the Call Off Contract with the successful Framework Supplier in accordance with paragraph 7 below.

3. **FURTHER COMPETITION PROCEDURE**

Contracting Authority’s Obligations

3.1 Any Contracting Authority awarding a Call Off Contract under this Framework Agreement through a Further Competition Procedure shall:

3.1.1. develop a Statement of Requirements setting out its requirements for the Services and identify the Framework Suppliers capable of supplying the Services;

3.1.2. amend or refine the Template Call Off Form and Template Call Off Terms to reflect its Services Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;

3.1.3. invite tenders by conducting a Further Competition Procedure for its Services Requirements in accordance with the Regulations and Guidance and in particular:

(a) if an Electronic Reverse Auction (as defined in paragraph 4 below) is to be held, the Contracting Authority shall notify the Framework Suppliers identified in accordance with paragraph 3.1.1 and shall conduct the Further Competition Procedure in accordance with the procedures set out in paragraph 4.3; or

(b) if an Electronic Reverse Auction is not used, the Contracting Authority shall:

(i) invite the Framework Suppliers identified in accordance with paragraph 3.1.1 to submit a tender in writing for each proposed Call Off Contract to be awarded by giving written notice by email to the relevant Supplier Representative of each Framework Supplier;

(ii) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the proposed Call Off Contract and the time needed to submit tenders; and

(iii) keep each tender confidential until the time limit set out for the return of tenders has expired.

3.1.4. apply the Further Competition Award Criteria to the Framework Suppliers compliant tenders submitted through the Further Competition Procedure as the basis of its decision to award a Call Off Contract for its Services Requirements;

3.1.5. on the basis set out above, award its Call Off Contract to the successful Framework Supplier in accordance with paragraph 7 which Call Off Contract shall:

(a) state the Services Requirements;

(b) state the tender submitted by the successful Framework Supplier;

(c) state the charges payable for the Services Requirements in accordance with the tender submitted by the successful Framework Supplier; and

(d) incorporate the Template Call Off Form and Template Call Off Terms (as may be amended or refined by the Contracting Authority in accordance with paragraph 3.1.2 above) applicable to the Services,

3.1.6. provide unsuccessful Framework Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.

The Suppliers Obligations

3.2 The Supplier shall in writing, by the time and date specified by the Contracting Authority following an invitation to tender pursuant to paragraph 3.1.3 above, provide the Contracting Authority with either:

3.2.1 a statement to the effect that it does not wish to tender in relation to the relevant Services Requirements; or

3.2.2 the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Supplier submits such a tender, it should include, as a minimum:

(a) an email response subject line to comprise unique reference number and Supplier name, so as to clearly identify the Supplier;

(b) a brief summary, in the email (followed by a confirmation letter), stating that the Supplier is bidding for the Statement of Requirements;

(c) a proposal covering the Services Requirements; and

3.2.3 The Supplier shall ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall be based on the Charging Structure and take into account any discount to which the Contracting Authority may be entitled as set out in Framework Schedule 3 (Framework Prices and Charging Structure).

3.2.4 The Supplier agrees that:

(a) all tenders submitted by the Supplier in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall remain open for acceptance by the Contracting Authority for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Contracting Authority in accordance with the Call Off Procedure); and

(b) all tenders submitted by the Supplier are made and will be made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:

(i) communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and

(ii) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

**4. E-AUCTIONS**

4.1 The Contracting Authority shall be entitled to formulate its Statement of Requirements in accordance with paragraph 3 above and invite the Supplier to a Further Competition Procedure including a reverse auction in accordance with the rules laid down by the Contracting Authority and the Regulations.

4.2 The Supplier acknowledges that Contracting Authorities may wish to undertake an electronic reverse auction, where Framework Suppliers compete in real time by bidding as the auction unfolds ("Electronic Reverse Auction").

4.3 Before undertaking an Electronic Reverse Auction, the relevant Contracting Authority will make an initial full evaluation of all tenders received in response to its Statement of Requirements. The Contracting Authority will then invite to the Electronic Reverse Auction only those tenders that are admissible in accordance with the Regulations. The invitation shall be accompanied by the outcome of the full initial evaluation of the relevant tenders.

4.4 The Contracting Authority will inform the Framework Suppliers of the specification for the Electronic Reverse Auction which shall include:

4.4.1 the information to be provided at auction, which must be expressed in figures or percentages of the specified quantifiable features;

4.4.2 the mathematical formula to be used to determine automatic ranking of bids on the basis of new prices and/or new values submitted;

4.4.3 any limits on the values which may be submitted;

4.4.4 a description of any information which will be made available to Framework Suppliers in the course of the Electronic Reverse Auction, and when it will be made available to them;

4.4.5 the conditions under which Framework Suppliers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;

4.4.6 relevant information concerning the electronic equipment used and the arrangements and technical specification for connection;

4.4.7 subject to paragraph 4.5, the date and time of the start of the Electronic Reverse Auction; and

4.4.8 details of when and how the Electronic Reverse Auction will close.

4.5 The Electronic Reverse Auction may not start sooner than two (2) Working Days after the date on which the specification for the Electronic Reverse Auction has been issued.

4.6 Throughout each phase of the Electronic Reverse Auction the Contracting Authority will communicate to all Framework Suppliers sufficient information to enable them to ascertain their relative ranking.

4.7 The Supplier acknowledges and agrees that:

4.7.1. the Contracting Authority and its officers, servants, agents, group companies, assignees and customers (including the Authority) do not guarantee that its access to the Electronic Reverse Auction will be uninterrupted or error-free;

4.7.2. its access to the Electronic Reverse Auction may occasionally be restricted to allow for repairs or maintenance; and

4.7.3. it will comply with all such rules that may be imposed by the Contracting Authority in relation to the operation of the Electronic Reverse Auction.

4.8 The Contracting Authority will close the Electronic Reverse Auction on the basis of:

4.8.1. a date and time fixed in advance;

4.8.2. when no new prices or values meeting the minimum differences required pursuant to paragraph 4.4.5 have been received within the prescribed elapsed time period; or

4.8.3. when all the phases have been completed.

**5. NO AWARD**

5.1 Notwithstanding the fact that the Contracting Authority has followed a procedure as set out above in paragraph 2 or 3 (as applicable), the Contracting Authority shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this Framework Agreement shall oblige any Contracting Authority to award any Call Off Contract.

**6. RESPONSIBILITY FOR AWARDS**

6.1 The Supplier acknowledges that each Contracting Authority is independently responsible for the conduct of its award of Call Off Contracts under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:

6.1.1 the conduct of Other Contracting Authorities in relation to this Framework Agreement; or

6.1.2 the performance or non-performance of any Call Off Contracts between the Supplier and Other Contracting Authorities entered into pursuant to this Framework Agreement.

**7. CALL OFF AWARD PROCEDURE**

7.1 Subject to paragraphs 1 to 6 above, a Contracting Authority may award a Call Off Contract with the Supplier by sending (including electronically) a signed Order Form substantially in the form (as may be amended or refined by the Contracting Authority in accordance with paragraph 3.1.2 above) of the Template Order Form set out in Framework Schedule 4 (Template Order Form and Template Call Off Terms). The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Contract) which is not as described in this paragraph 7 shall not constitute a Call Off Contract under this Framework Agreement.

7.2 On receipt of an Order Form as described in paragraph 7.1 from a Contracting Authority the Supplier shall accept the Call Off Contract by promptly signing and returning (including by electronic means) a copy of the Order Form to the Contracting Authority concerned.

7.3 On receipt of the signed Order form from the Supplier, the Contracting Authority shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and a Call Off Contract shall be formed.

**FRAMEWORK SCHEDULE 9 – CALL-OFF AWARD CRITERIA**

1. **GENERAL**
	1. This Framework Schedule 6 is designed to assist Contracting Authorities seeking to award a Call Off Contract on the basis of direct award or through reopening competition under a Further Competition Procedure in accordance with the Call Off Procedure.
	2. A Call Off Contract shall be awarded on the basis of most economically advantageous tender ("MEAT") from the point of view of the Contracting Authority.
	3. This Framework Schedule 6 includes details of the evaluation criteria and any weightings that will be applied to that criteria.
2. **PART A: DIRECT AWARD**

2.1 The Direct Award Criteria applied to the tenders of those Suppliers appointed to this Framework Agreement shall be as follows:

|  |
| --- |
| **Criteria** |
| Value for money: e.g. the Contracting Authority believes that the Supplier provides demonstrable value for money, which may include but is not limited to:* Cost effectiveness;
* Price; and
* Quality.
 |

1. **PART B: FURTHER COMPETITION AWARD CRITERIA**

3.1 The following criteria shall be applied to the Services set out in the Suppliers compliant tenders submitted through the Further Competition Procedure:

|  |  |  |  |
| --- | --- | --- | --- |
| **Lot** | **Criteria** | **Percentage Weightings**(to be set by the Contracting Authority conducting the further competition) | **Allowable Variance**(This may be modified by the Contracting Authority within the range below) |
| 1 | Quality | 60% | +/- 20% (40% to 80%) |
| Price | 40% | +/- 20% (20% to 60%) |
| 2 | Quality | 70% | +/- 20% (50% to 0%) |
| Price | 30% | +/- 20% (10% to 50%) |
| 3 | Quality | 80% | +/- 20% (60% to 100%) |
| Price | 20% | +/- 20% (0% to 40%) |

**FRAMEWORK SCHEDULE 10 – Departmental Security Standards**

(See ITT Document 4, Attachment 3)