

# **CONTRACT FOR THE PROVISION OF CLOUD BASED SERVICE PT-X AND ASSOCIATED ANNUAL SUPPORT AND PROFESSIONAL SERVICES**

**THIS CONTRACT IS DEEMED TO BE EFFECTIVE FROM: 19 September 2019**

## **Parties**

- 1) The Secretary of State for Education whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT acting as part of the Crown (“the Department”); and**
- 2) Bottomline Technologies Limited 08098450 Contractor whose registered office is at 1600 Arlington Business Park, Theale, Reading, Berkshire, England, RG7 4SA (“the Contractor”)**

## **Recitals**

The Contractor has agreed to provide all services documented in to provide DfE Payment services using PTX (C-Series and previously V series) software & associated support services on the terms and conditions set out in this Contract.

The Department's reference number for this Contract is ICT2019/RD1002393

## **1 Interpretation**

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

<b>“the Services”</b>	the services to be performed by the Contractor as described in Schedule 1, comprising the provision of Software licences, Equipment, Service Levels and Professional Services;
<b>"Affiliate"</b>	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;
<b>“Central Government Body”</b>	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"the Contract Manager"

<Redacted>

"Contractor Personnel"

all employees, agents, Contractors and contractors of the Contractor and/or of any Sub-contractor;

"the Contractors Contract Manager"

<Redacted>

"Confidential Information"

the Department's Confidential Information and/or the Contractor's Confidential Information;

"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;

"Contractor Personnel"

all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor;

"Control"

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

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

take the meaning given in the GDPR

"Crown"

means Queen Elizabeth II and any successor

"Crown Body"

any department, office or agency of the Crown;

"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
"DPA 2018"	Data Protection Act 2018
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Protection Legislation"	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Subject Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
"Department's Confidential Information"	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Department, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
"Department's Intellectual Property Rights"	means all Intellectual Property Rights comprised in or necessary for or arising from the performance of the Consultancy Services
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679)
"Her Majesty's Government"	means 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
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Intellectual Property Rights"	means any copyright, rights in designs, database rights, domain names, trade marks, service marks, patents or any applications for any of the foregoing, know-how or similar rights or obligations (whether registerable or not) including Moral Rights as defined in Chapter IV of the Copyright, Designs and Patents Act 1988
"Joint Controllers"	Where two or more Controllers jointly determine the purposes and means of processing
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;
"LED"	Law Enforcement Directive (Directive (EU) 2016/680)
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;

“Processor Personnel”	employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract.
“Property”	means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract.
“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those set out in the Contract. .
“Regulatory Bodies”	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 Contract or any other affairs of the Department and " <b>Regulatory Body</b> " shall be construed accordingly.
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"SME"	means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and any subsequent revisions.

"Sub-contractor"	the third party with whom the Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
"Sub-processor"	any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

- 1.2** References to "Contract" mean this contract (and include the Schedules). References to "Clauses" and "Schedules" mean clauses of and schedules to this Contract. The provisions of the Schedules shall be binding on the parties as if set out in full in this Contract.
- 1.3** Reference to the singular include the plural and vice versa and references to any gender include both genders and the neuter. References to a person include any individual, firm, unincorporated association or body corporate.

## **2 Commencement and Continuation**

This Contract shall be deemed to have been effective from 19/09/19. The Contractor shall commence the Services on 19/09/19 and, subject to Clause 10.1 shall complete the Services on or before 18/09/21. The Contract may be extended for maximum of 12 months. Any extensions will be utilised at the sole discretion of the Department, no further extensions will be permitted.

The parties agree and acknowledge that all dates specified in this Contract are mutually agreed targets.

## **3 Contractor's Obligations**

- 3.1** The Contractor shall promptly and efficiently complete the Services in accordance with the provisions set out in Schedule 1, and the special conditions set out in Schedule 3. Where there is any conflict between the terms of this Contract and the special conditions set out in Schedule 3, the special conditions shall prevail.
- 3.2** The Contractor shall comply with the accounting and information provisions of Schedule 2.
- 3.3** The Contractor shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.

## **4 Departments Obligations**

The Department will 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 to be submitted by the Contractor for work completed to the satisfaction of the Department.

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

- 5.1** The Department shall notify the Contractor of any material change to the Department's requirement under this Contract.
- 5.2** The Contractor shall use its reasonable 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.

## **6 Management**

- 6.1** The Contractor shall promptly comply with all reasonable requests or directions of the Contract Manager in respect of the Services.
- 6.2** The Contractor shall address any enquiries about procedural or contractual matters in writing to the Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.

## **7 Contractor's Employees and Sub-Contractors**

- 7.1** Where the Contractor enters into a contract with a supplier or contractor for the purpose of performing its obligations under the Contract (the "**Sub-contractor**") it shall ensure prompt payment in accordance with this clause 7.1. Unless otherwise agreed by the Department in writing, the Contractor shall ensure that any contract requiring payment to a Sub-contractor shall provide for undisputed sums due to the Sub-contractor to be made within a specified period from the receipt of a valid invoice not exceeding:

7.1.1 10 days, where the Sub-contractor is an SME; or

7.1.2 30 days either, where the sub-contractor is not an SME, or both the Contractor and the Sub-contractor are SMEs,

The Contractor shall comply with such terms and shall provide, at the Department's request, sufficient evidence to demonstrate compliance.

- 7.2** The Department shall be entitled to withhold payment due under clause 7.1 for so long as the Contractor, in the Department's reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with clause 7.1. For the avoidance of doubt the Department shall not be liable to pay any interest or penalty in withholding such payment. .

- 7.3** The Contractor shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in all respects to perform the Services.
- 7.4** The Contractor shall give to the Department if so requested a list of all persons who are or may be at any time directly concerned with the performance of this Contract 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.
- 7.5** If the Department notifies the Contractor that it considers that an employee or sub-contractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Contract, then the Contractor shall, as soon as is reasonably practicable, take all such steps as the Department considers necessary to remedy the situation or, if so required by the Department, shall remove the said employee or sub-contractor from providing the Services and shall provide a suitable replacement (at no cost to the Department).
- 7.6** The Contractor shall take all reasonable steps to avoid changes of employees or sub-contractors assigned to and accepted to provide the Services under the Contract except whenever changes are unavoidable or of a temporary nature. The Contractor shall give at least one month's written notice to the Contract Manager of proposals to change key employees or sub-contractors.
- 7.7** The Contractor shall immediately notify the Department if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.
- 7.8** The Contractor, its employees and sub-contractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
- 7.9** The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Department's reasonable security requirements as required from time to time.
- 7.10** Not Used

## **8 Intellectual Property Rights**

- 8.1** It is acknowledged and agreed between the parties that all existing or future Department's Intellectual Property Rights shall vest in the Crown absolutely.
- 8.2** Any Intellectual Property Rights of the Contractor which are in existence at the date of this Contract and which are comprised in or necessary for or arising from the performance of the Consultancy Services owned by the Contractor ("**Background**



**Intellectual Property**") shall remain in the ownership of the Contractor but in consideration of the fees payable pursuant to this Contract, the Contractor hereby grants to the Department in respect of such Background Intellectual Property an irrevocable, non-exclusive, royalty-free, perpetual licence with rights to grant sub-licences.

- 8.3** The Contractor agrees that at the request and cost of the Department it will and procure that its officers, employees and agents will at all times do all such reasonable acts and execute all such documents as may be reasonably necessary or desirable to ensure that the Department receives the full benefit of all of its rights under this Contract in respect of the Department's Intellectual Property Rights or to assist in the resolution of any question concerning the Intellectual Property Rights.
- 8.4** The Contractor hereby waives any Moral Rights as defined at Chapter IV of the Copyright, Designs and Patents Act 1988.
- 8.5** The Contractor warrants:
- 8.5.1 that the Department's Intellectual Property Rights comprise the original work of and were created by or on behalf of the Contractor;
  - 8.5.2 that the Department's Intellectual Property Rights have not and will not be copied wholly or in part from any other work or material;
  - 8.5.3 That the use of or exercise by the Department of the Department's Intellectual Property Rights and the Background Intellectual Property will not infringe the rights of any third party;
  - 8.5.4 that the Contractor has not granted or assigned any rights of any nature in the Department's Intellectual Property Rights to any third party.
- 8.6** The Contractor shall ensure that any copyright materials produced by or on behalf of the Contractor shall be marked with the following copyright notice " © Crown Copyright \*\*\*year of publication\*\*\*".

## **9 Warranty and Indemnity**

- 9.1** The Contractor warrants to the Department that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Department to expect in all the circumstances. The Department will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.

**9.2** Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Contract then the Department shall be entitled, where appropriate to:

9.2.1 require the Contractor promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or

9.2.2 assess the cost of remedying the failure ("the assessed cost") and to deduct from any sums due to the Contractor the Assessed Cost for the period that such failure continues.

**9.3** The Contractor shall be liable in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Department or otherwise arising out of or in the course of or caused by the provision of the Services.

**9.4** Subject to the limitations of liability set out in clause 10 of the PTX terms the Contractor shall be liable for any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Contract or otherwise through the default of the Contractor

**9.5** All property of the Contractor whilst on the Department's premises shall be there at the risk of the Contractor and the Department shall accept no liability for any loss or damage howsoever occurring to it.

**9.6** The Contractor shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. The Contractor shall upon request produce to the Department, copies of its policy or policies of insurance

## **10 Termination**

**10.1** This Contract may be terminated by either party giving to the other party at least 30 days notice in writing.

**10.2** In the event of any breach of this Contract by either party, the other party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the party not in breach may terminate this Contract with immediate effect by notice in writing.

**10.3** In the event of a material breach of this Contract by either party, the other party may terminate this Contract with immediate effect by notice in writing.

**10.4** This Contract may be terminated by the Department with immediate effect by notice in writing if at any time:-

- 10.4.1** the Contractor passes a resolution that it be wound-up or that an application be made for an administration order or the Contractor applies to enter into a voluntary arrangement with its creditors; or
- 10.4.2** a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Contractor's property, assets or any part thereof; or
- 10.4.3** the court orders that the Contractor be wound-up or a receiver of all or any part of the Contractor's assets be appointed; or
- 10.4.4** the Contractor is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986.
- 10.4.5** there is a change in the legal or beneficial ownership of 50% or more of the Contractor's share capital issued at the date of this Contract or there is a change in the control of the Contractor, unless the Contractor has previously notified the Department in writing. For the purpose of this Sub-Clause 10.4.5 "control" means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power.
- 10.4.6** the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct
- 10.4.7** the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;
- 10.4.8** the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to the payment of Social Security contributions;
- 10.4.9** the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to payment of taxes;
- 10.4.10** the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Contract.

**10.5** Nothing in this Clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

## **11 Status of Contractor**

**11.1** In carrying out its obligations under this Contract the Contractor agrees that it will be acting as principal and not as the agent of the Department.

**11.2** The Contractor shall not say or do anything that may lead any other person to believe that the Contractor is acting as the agent of the Department.

## **12 Confidentiality**

**12.1** Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:

12.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

12.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

**12.2** Clause 12 shall not apply to the extent that:

12.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 13 (Freedom of Information);

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

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

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

12.2.5 it is independently developed without access to the other party's Confidential Information.

**12.3** The Contractor may only disclose the Department's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Project and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

**12.4** The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Department's Confidential Information received otherwise than for the purposes of this Contract.

**12.5** The Contractor shall ensure that their employees, servants or such professional advisors or consultants are aware of the Contractor's obligations under this Contract.

**12.6** Nothing in this Contract shall prevent the Department from disclosing the Contractor's Confidential Information:

12.6.1 on a confidential basis to any Central Government Body for any proper

purpose of the Department or of the relevant Central Government Body;

12.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

12.6.3 to the extent that the Department (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

12.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 12.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;

12.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or

12.6.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.

- 12.7** The Department shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 12 is made aware of the Department's obligations of confidentiality.
- 12.8** Nothing in this clause 12 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 12.9** The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 12.10** Subject to Clause 12.9, the Contractor hereby gives its consent for the Department to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 12.11** The Department may consult with the Contractor to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.
- 12.12** The Contractor shall assist and cooperate with the Department to enable the Department to publish this Contract.

### **13 Freedom of Information**

- 13.1** The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and

cooperate with the Department to enable the Department to comply with its information disclosure obligations.

**13.2** The Contractor shall and shall procure that its Sub-contractors shall:

13.2.1 transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

13.2.2 provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five Working Days (or such other period as the Department may specify) of the Department's request; and

13.2.3 provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

**13.3** The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

**13.4** In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Department.

**13.5** The Contractor acknowledges that (notwithstanding the provisions of Clause 13) the Department may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:

13.5.1 in certain circumstances without consulting the Contractor; or

13.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where 13.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

**13.6** The Contractor shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

**14 Access and Information**

The Contractor shall provide access at all reasonable times to the Department's internal auditors or other duly authorised staff or agents to inspect such documents as the Department considers necessary in connection with this Contract and where appropriate speak to the Contractors employees.

## **15 Transfer of Responsibility on Expiry or Termination**

- 15.1** The Contractor shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.
- 15.2** Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in the Schedule.
- 15.3** Subject to clause 15.1, the Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility.
- 15.4** The DfE Project lead and the Contractor Account Manager to define an exit and Service Transfer Plan post-contract and add by Change Control Procedure.

## **16 Tax Indemnity**

- 16.1** Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

Where the Department has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Department reserves the right to calculate Income Tax and pay it to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.

- 16.2** Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

Where the Department has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Department reserves the right to calculate primary (employee) National Insurance contributions (NICs) and pay them to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.

- 16.3** The Department may, at any time during the term of this contract, ask the Contractor to provide information which demonstrates how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it.
- 16.4** A request under Clause 16.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 16.5** The Department may terminate this contract if-
- (a) in the case of a request mentioned in Clause 16.3 above if the Contractor:
    - (i) fails to provide information in response to the request within a reasonable time,
    - or
    - (ii) provides information which is inadequate to demonstrate either how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it;
  - (b) in the case of a request mentioned in Clause 16.4 above, the Contractor fails to provide the specified information within the specified period, or
  - (c) it receives information which demonstrates that, at any time when Clauses 16.1 and 16.2 apply, the Contractor is not complying with those Clauses.
- 16.6** The Department may supply any information which it receives under Clause 16.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 16.7** The Contractor warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.
- 16.8** The Contractor will account to the appropriate authorities for any income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.
- 16.9** The Contractor shall indemnify Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by Department in connection with any such assessment or claim. Clause not used
- 16.10** The Contractor authorises the Department to provide the HM Revenue and



Customs and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not Department is obliged as a matter of law to comply with such request.

## **17 Data Protection**

- 17.1** The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 3a. The only processing that the Processor is authorised to do is listed in Schedule 3a by the Controller and may not be determined by the Processor
- 17.2** The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 17.3** The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.4** The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with Schedule 3a , unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that :
    - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 3a);

- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - (A) are aware of and comply with the Processor's duties under this clause;
  - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

**17.5** Subject to clause 17.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

**17.6** The Processor's obligation to notify under clause 17.5 shall include the provision of further information to the Controller in phases, as details become available.

- 17.7** Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 17.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 17.8** The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 17.9** The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 17.10** Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 17.11** Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 17 such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 17.12** The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 17.13** The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or

similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

- 17.14** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **18 Amendment and variation**

No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Contractor shall comply with any formal procedures for amending or varying contracts which the Department may have in place from time to time.

## **19 Assignment and Sub-contracting**

The benefit and burden of this Contract may not be assigned or sub-contracted in whole or in part by the Contractor without the prior written consent of the Department. Such consent may be given subject to any conditions which the Department considers necessary. The Department may withdraw its consent to any sub-contractor where it no longer has reasonable grounds to approve of the sub-contractor or the sub-contracting arrangement and where these grounds have been presented in writing to the Contractor.

## **20 The Contract (Rights of Third Parties) Act 1999**

This Contract is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person not a party to the Contract.

## **21 Waiver**

No delay by or omission by either Party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

## **22 Notices**

- 22.1** Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, or e-mail, addressed to the recipient at its registered office or its address (or such other address, or e-mail address as may be notified in writing from time to time).

- 22.2** The notice, demand or communication shall be deemed to have been duly served:

22.2.1 if delivered by hand, when left at the proper address for service;

22.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;

22.2.3 if made by e-mail, at the time of transmission, dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message or, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

## **23 Dispute resolution**

- 23.1** The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.
- 23.2** Any dispute not capable of resolution by the parties in accordance with the terms of Clause 23 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 23.3** No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.

## **24 Discrimination**

- 24.1** The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 24.2** The Contractor shall take all reasonable steps to secure the observance of Clause 24.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

## **25 Law and Jurisdiction**

This Contract shall be governed by and interpreted in accordance with English Law and the parties submit to the jurisdiction of the English courts.

As witness the hands of the parties

Authorised to sign for and on  
behalf of the Secretary of  
State for Education

Signature

Name in CAPITALS

<Redacted>

Position in Organisation

<Redacted>

Address in full

<Redacted>

Date

Authorised to sign for and on  
behalf of Bottomline Technologies Limited

Signature

Name in CAPITALS

<Redacted>

Position in Organisation

<Redacted>

Address in full

<Redacted>

Date

## Schedule 1

### 1. Background

The DfE Finance Department is required to make regular payment of significant sums (<Redacted>) to various suppliers and partners in respect of education services funding. Volumes are not significant, but the quantities are equal to <Redacted>.

The DfE makes payments to Vendors who are 'Suppliers of Services', and 'Providers of skills training' and to individuals for 'salary and expenses payments', and payments are also made for other organisations such as ESFA which is an executive agency, sponsored by the Department for Education, and other DfE Arm's Length Bodies (ALB's).

DfE operates two applications that enable payments to be made via BACS, Faster Payments for BACS or via CHAPS. The Department will continue it's ongoing dual use of two applications to provide an additional level of resilience to its payment operations.

DfE provides a payments service to 7 entities (Listed below)

In addition, in 2019 the DfE payments service will be expanding to provide payment services for 3 additional organisations from the DfE, and also to provide Payroll related payments. This will give a total of 10 organisations, using between 10-20 Bank accounts. DfE have analysed the existing payments applications used to understand the minimum viable product required.

The minimum viable product will provide a fully-tested and live solution meeting agreed 'must have' Minimum Viable Product (MVP) business requirements and design specifications. The precise go-live date to be agreed during the design phase of the project.

	Entity Name	Required
Executive Agencies	Education Skills Funding Agency (ESFA)	<Redacted>
	National College for Teaching and Leadership (NCTL)	<Redacted>
	Standards and Testing Agency (STA)	<Redacted>
	Teaching Regulation Agency (TRA)	<Redacted>
Non Departmental Public Bodies (Executive)	Located Property Ltd (LocatED)	<Redacted>
	Institute for Apprenticeships (IFA)	<Redacted>
	Student Loans Company (SLC)	<Redacted>
	Office of the Children's Commissioner (OCC)	<Redacted>
	Construction Industry Training Board (CITB)	<Redacted>
	Engineering Construction Industry Training Board (ECITB)	<Redacted>
	Equality and Human Rights Commission (EHRC)	<Redacted>
	Higher Education Funding Council for England (HEFCE)	<Redacted>
	Office for Fair Access (OFFA)	<Redacted>
Non Departmental Public Bodies (Advisory or Other)	Aggregator Vehicle PLC	<Redacted>
	Social Mobility Commission (SMC)	<Redacted>
	Office of the School Adjudicator (OSA)	<Redacted>
	School Teachers' Review Body (STRB)	<Redacted>
New Entities/Being Set up	Social Work England (SWE)	<Redacted>
	Office for Students (OfS)	<Redacted>

## **1 Aim**

The Contractor shall use all reasonable endeavours to deliver the minimum viable product – by providing a fully-tested and live solution meeting agreed ‘must have’ Minimum Viable Product (MVP) business requirements and design specifications by the end of September 2019, with a precise go-live date to be agreed during the design phase of the project.

## **2 Methodology**

Ongoing management reporting, contract and account reviews, including frequency, format and content to be agreed post-contract between the DfE Contract Manager and Project lead and the Contractor Account Manager and Contract Manager and added by Change Control Procedure.

(\* For completeness the full set of DfE requirement including Bottomlines response, and subsequent agreements following clarification discussions are embedded at 3a below)

<Redacted>

## **3 Schedule of Work**

**Indicative Implementation Plan :** <Redacted>

**Interfaces:** <Redacted>

**3a DfE Requirement** <Redacted>



## **Schedule 1.1**

- 1** Change Control Procedure - means the contract change procedure for making changes to this Contract including to the Services.
- 2** Both parties shall conduct discussions relating to proposed changes to this Contract in good faith. Neither party shall unreasonably withhold or delay consent to the other party's proposed changes to this Contract.
- 3** Until such time as a Contract Change Note (CCN) has been signed by both parties, the Contractor shall continue to provide and make available the Ordered Solutions in accordance with this Contract.
- 4** Should either party wish to propose a change to this Contract, that party shall submit a draft CCN detailing the proposed change to the other party using the proforma at Annex A .
- 5** A CCN signed by both parties shall constitute an amendment to this Contract.

## **Schedule 1.2**

- 1** Staff Vetting
- 2** Provision of Professional Services and access by contractor staff to Departmental Data shall be confined to those individuals who have a “need-to-know” and whose access is essential for the purpose of their duties. All employees with direct or indirect access to Departmental Data shall be subject to pre-employment checks in accordance with its own reference and vetting policy attached hereto.

<Redacted>

End of schedule 1

## Schedule 2

	Year 1 (exc VAT)	Year 2 (exc VAT)	Total
Core solution (10 SUN's and 5 concurrent users/30 named users)	<Redacted>	<Redacted>	<Redacted>
Hosting & Support and Maintenance	<Redacted>	<Redacted>	<Redacted>
Onboarding/Training	<Redacted>	<Redacted>	<Redacted>
- Scoping & definition	<Redacted>	<Redacted>	<Redacted>
Training	<Redacted>	<Redacted>	<Redacted>
Onboarding	<Redacted>	<Redacted>	<Redacted>
Additional Development	<Redacted>	<Redacted>	<Redacted>
Data Transfer	<Redacted>	<Redacted>	<Redacted>
Other solution components	<Redacted>	<Redacted>	<Redacted>
2FA (assumes 30 users)	<Redacted>	<Redacted>	<Redacted>
Total core solution	<Redacted>	<Redacted>	<Redacted>
Additional SUN's/Users (2.5%)	<Redacted>	<Redacted>	<Redacted>
For each additional 5 SUN's (up to total of 25)	<Redacted>	<Redacted>	<Redacted>
For each additional 5 users (up to total of 10 concurrent/35 named users)	<Redacted>	<Redacted>	<Redacted>
Sub-total	<Redacted>	<Redacted>	<Redacted>
Professional services (2.5%)	<Redacted>	<Redacted>	<Redacted>
Optional: Test environment	<Redacted>	<Redacted>	<Redacted>
- Total			£63,120

1 Funds allocated to a particular expenditure detailed in both tables under section 1 “The Table” 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 either table may not be altered except with the prior written consent of the Department.

2 The Contractor shall maintain full and accurate accounts for the Service against the expenditure headings in the Table. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Contract. Input and output VAT shall be included as separate items in such accounts.

3 The Contractor shall permit duly authorised staff or agents of the Department or the National Audit Office to examine the accounts at any reasonable time subject to prior written notice as to date and scope and shall furnish oral or written explanations of the account if required. The Department reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Contractor has used the Department's resources in the performance of this Contract.

4 Invoices shall be prepared by the Contractor after each Step as specified within the Table in arrears and shall be detailed against the expenditure headings set out in the Table. The Contractor verifies that any invoice issued to the Department shall be for amounts that were expended wholly and necessarily by the Contractor on the Service in accordance with the Contract. 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.

5 The Department shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this paragraph, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

6 Invoices shall be sent, no later than 30 days of the end of the relevant stage or month addressed to the Department for Education and emailed to OCR, AccountsPayable <Redacted> quoting the Contract reference number and relevant Purchase Order (PO) number provided by the Department. Invoices without the PO number provided by the Department will be rejected. If the Contractor sends any supporting documentation such as timesheets, back-up emails, etc. these will need to be sent in PDF format ensuring the invoice is on the first page.

A copy of the invoice should also be sent to the contract manager Deborah Ainsworth <Redacted>

The Department undertakes to pay correctly submitted invoices within 5 days of receipt. The Department is obliged to pay invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Department.

Any correctly submitted invoices that are not paid within 30 days will be subject to the provisions of the Late Payment of Commercial Debt (Interest) Act 1998. A correct invoice is one that: is delivered in timing in accordance with the contract and conforms to HMRC rules; is for the correct sum; in respect of services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, supplier name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated email address. If any problems arise, contact the Department's Contract Manager. The Department aims to reply to complaints within 10 working days. The Department shall not be responsible for any delay in payment caused by incomplete or illegible invoices.

7 The Contractor 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 Contractor, would reasonably have been required for that purpose.

8 If this Contract is terminated by the Department due to the Contractor's insolvency or default at any time before completion of the Service, the Department shall only be liable under paragraph 1 to reimburse eligible payments made by, or due to, the Contractor before the date of termination.

9 On completion of the Service or on termination of this Contract, the Contractor 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.

10 The Department shall not be obliged to pay the final invoice until the Contractor has carried out all the elements of the Service specified as in Schedule 1.

11 It shall be the responsibility of the Contractor 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 Contract shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.

## **12 Software & Equipment Shipment**

All Software shall be shipped to the premises as indicated on the Order Agreement attached hereto by electronic means wherever available and Equipment by secure courier. Risk in and acceptance of the Equipment and/or Software shall pass when they leave the Contractor's premises.

It is mutually recognised that the parties may add subsequent purchases of the Services, or Professional Services to this Contract subject to the Change Control Procedure and that accordingly the volume of Transactions and/or Transmissions utilised by the Department may vary from time to time during the course of this Contract.

### 13 DfE Expenses Policy

The Department shall reimburse the Contractor such reasonable travelling and hotel expenses wholly and reasonably incurred by the Contractor in connection with the provision of the Services in accordance with this expenses policy of the Department. Payment of expenses shall be made only upon the provision of suitable VAT invoices relating to the provision of such expenses.

Such reasonable travelling and hotel expenses (clause 1.1 refers) shall be limited as follows and no other out of pocket expenses shall be allowable. For the avoidance of doubt where stated rates apply these shall be based on the Department's rates specified below and shall be fixed for the duration of the Contract.

13.1 hotel accommodation bed and breakfast, the Department to reimburse the Contractor actual expenditure which shall not exceed the Department's rates of London £110 including VAT, elsewhere £75 including VAT;

13.2 rail travel, the Department to reimburse the Contractor actual expenditure which shall be restricted to standard class;

13.3 car mileage, the Department to reimburse the Contractor at the Department's "Public Transport Rate" (PTR) of 25 pence per mile;

13.4 taxis, the Department to reimburse the Contractor actual costs only where their use can be justified against using public transport.

The Contractor shall maintain full and accurate accounts for the Consultancy Services. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Contract. Input and output VAT shall be included as separate items in such accounts.

The Contractor shall permit duly authorised staff or agents of the Department or the National Audit Office to examine the accounts identified in Clause 1.2 above at any reasonable time and shall furnish oral or written explanations of the account if required. The Department reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Contractor has used the Department's resources in the performance of this Contract.

- 14 If this Contract is terminated by the Department due to the Contractor's insolvency or default at any time before completion of the Service, the Department shall only be liable under paragraph 1 to reimburse eligible payments made by, or due to, the Contractor before the date of termination.
- 15 On completion of the Service or on termination of this Contract, the Contractor 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.
- 16 The Department shall not be obliged to pay the final invoice until the Contractor has carried out all the elements of the Service specified as in Schedule 1.

- 17** It shall be the responsibility of the Contractor 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 Contract shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.

End of Schedule 2

## Schedule 3: DfE Supplemental Clauses

### Departmental Security Standards

#### Departmental Security Standards for Business Services and ICT Contracts

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



	the link below points to one of these providers: <a href="https://www.iasme.co.uk/apply-for-self-assessment/">https://www.iasme.co.uk/apply-for-self-assessment/</a>
<p>"Data"</p> <p>"Data Controller"</p> <p>"Data Processor"</p> <p>"Personal Data"</p> <p>"Sensitive Personal Data"</p> <p>"Data Subject", "Process" and "Processing"</p>	shall have the meanings given to those terms by the Data Protection Act 2018
<p>"Department's Data"</p> <p>"Department's Information"</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Contractor by or on behalf of the Department; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;</p>
<p>"DfE"</p> <p>"Department"</p>	means the Department for Education
"Departmental Security Standards"	means the Department's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
"Digital Marketplace / GCloud"	the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.
"FIPS 140-2"	this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled 'Security Requirements for Cryptographic Modules'. This document is the de facto security standard used for the accreditation of cryptographic modules.

<p>“Good Industry Practice”</p> <p>“Industry Good Practice”</p>	<p>means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>“Good Industry Standard”</p> <p>“Industry Good Standard”</p>	<p>means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>“GSC”</p> <p>“GSCP”</p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>
<p>“HMG”</p>	<p>means Her Majesty’s Government</p>
<p>“ICT”</p>	<p>means Information and Communications Technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution</p>
<p>“ISO/IEC 27001” “ISO 27001”</p>	<p>is the International Standard for Information Security Management Systems Requirements</p>
<p>“ISO/IEC 27002” “ISO 27002”</p>	<p>is the International Standard describing the Code of Practice for Information Security Controls.</p>
<p>“ISO 22301”</p>	<p>is the International Standard describing for Business Continuity</p>
<p>“IT Security Health Check (ITSHC)”</p> <p>“IT Health Check (ITHC)”</p> <p>“Penetration Testing”</p>	<p>means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.</p>
<p>“Need-to-Know”</p>	<p>the Need-to-Know principle is employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.</p>
<p>“NCSC”</p>	<p>The National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Authority for Information Assurance. The NCSC website is <a href="https://www.ncsc.gov.uk">https://www.ncsc.gov.uk</a></p>

<p>“OFFICIAL”</p> <p>“OFFICIAL-SENSITIVE”</p>	<p>the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.</p> <p>the ‘OFFICIAL–SENSITIVE’ caveat is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the Government Security Classification Policy.</p>
<p>“Secure Sanitisation”</p>	<p>Secure sanitisation is the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. Some forms of sanitisation will allow you to re-use the media, while others are destructive in nature and render the media unusable. Secure sanitisation was previously covered by “Information Assurance Standard No. 5 - Secure Sanitisation” (“IS5”) issued by the former CESG. Guidance can now be found at:</p> <p><a href="https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media">https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</a></p> <p>The disposal of physical documents and hardcopy materials advice can be found at:</p> <p><a href="https://www.cpni.gov.uk/secure-destruction">https://www.cpni.gov.uk/secure-destruction</a></p>
<p>“Security and Information Risk Advisor”</p> <p>“CCP SIRA”</p> <p>“SIRA”</p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also:</p> <p><a href="https://www.ncsc.gov.uk/articles/about-certified-professional-scheme">https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</a></p>
<p>“SPF”</p> <p>“HMG Security Policy Framework”</p>	<p>This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.</p> <p><a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a></p>
<p>“Tailored Assurance”</p> <p>[formerly called “CTAS”, or,</p> <p>“CESG Tailored Assurance”]</p>	<p>is an ‘information assurance scheme’ which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector customers procuring IT systems, products and services, ranging from simple software components to national infrastructure networks.</p> <p><a href="https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology">https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology</a></p>

- 1.1. The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 1.2. Where the Contractor will provide ICT products or services or otherwise handle information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) 25 May 2016, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
- 1.3 The Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4 The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service, and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 1.5 Departmental Data being handled in the course of providing an ICT solution or service must be segregated from all other data on the Contractor's or sub-contractor's own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 1.14.
- 1.6 The Contractor shall have in place and maintain physical security, in line with those outlined in ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access) to premises and sensitive areas
  - (Guidance: Where the contractor's and sub-contractor services are wholly carried out within Departmental premises and all access to buildings or ICT systems is managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause and it need not be included.)

- 1.7 The Contractor shall have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.
- 1.8 The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 1.9 Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- 1.10 Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 1.11 and 1.12 below.
- 1.11 Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.12
- 1.13 All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.14 Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- 1.15 When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.

- 1.16 At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- 1.17 Access by Contractor or sub-contractor staff to Departmental Data shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Contractor or sub-contractor staff must complete this process before access to Departmental Data is permitted.
- 1.18 All Contractor or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 1.19 The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.20 Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, or any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- 1.21 The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.

- 1.22 The Contractor or sub-contractors providing the service will provide the Department with full details of any storage of Departmental Data outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management, support or development function from outside the UK. The Contractor or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- 1.23 The Department reserves the right to audit the Contractor or sub-contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any sub-contractors, compliance with the clauses contained in this Section.
- 1.24 The Contractor shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party suppliers, sub-contractors or partners who could potentially access Departmental Data in the course of providing this service.
- 1.25 The Contractor and sub-contractors shall undergo appropriate security assurance activities as determined by the Department. Contractor and sub-contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation such as completing the DfE Security Assurance Model (DSAM) process or the Business Service Assurance Model (BSAM). This will include obtaining any necessary professional security resources required to support the Contractor's and sub-contractor's security assurance activities such as: a NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA)

## Schedule 3a

### Processing, Personal Data and Data Subjects

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

1. The contact details of the Controller's Data Protection Officer are:  
<Redacted>
2. The contact details of the Processor's Data Protection Officer are:  
<Redacted>
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Department is the Controller and the Contractor is the Processor in accordance with Clause 17.1.
Subject matter of the processing	The C-Series system forms part of the BACS payment solution with the supplier as Bottomline Technologies. The solution is used to pay suppliers and educational institutions for entities managed by ESFA (i.e. ESFA, DfE Capital, IFA, LocatED, OCC, and SWE).
Duration of the processing	Duration of the Agreement
Nature and purposes of the processing	Payment file processing via BACS; <ul style="list-style-type: none"><li>• processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;</li><li>• processing is necessary for compliance with a legal obligation to which DfE is subject;</li><li>• processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in DfE;</li><li>• processing is necessary and records need to be kept for the accounting of financial payments made to Institutions/Suppliers;</li></ul>



Type of Personal Data	<p>There is no personal data held in the system, details are held of</p> <ul style="list-style-type: none"> <li>Names of Organisation/Payee names</li> <li>Bank Details of organisations/payees</li> <li>Amount to be paid</li> </ul>
Categories of Data Subject	PTX (C Series) is expected to support all processes related to above.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	All records must be retained for a minimum of 7 years and must be available for reporting purposes

## ANNEX A

**THIS AGREEMENT** is made on [insert in manuscript the date this Agreement is signed]

### **BETWEEN:-**

- (1) **THE SECRETARY OF STATE FOR EDUCATION** whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "**Department**"); and
- (2) **[INSERT COMPANY NAME]** (No: [insert registered number]) whose registered office is situated at [insert the full registered office address] ("**Contractor**").

### **[OR]**

- (2) **[INSERT INDIVIDUAL'S NAME]**, a partner in the partnership of [insert name of the partnership] of [insert the full address] ("**Contractor**").

### **[OR]**

- (2) **[INSERT INDIVIDUAL'S NAME]**, trading as [insert the trading name] of [insert the full address] ("**Contractor**").

**[Note: Choose the appropriate paragraph 2 from those above and then delete the others. The contracting party details should reflect those in the original contract subject to this variation.]**

### **RECITALS:-**

- (A) The Department and the Contractor entered into a [insert type of original contract e.g. Contract for Services] dated [insert date of original contract] with the Department's reference number of [insert the unique reference number of the Original contract] ("**Original Contract**") for the purposes of [insert brief details of purpose of original contract e.g. of the supply of administrative services].
- (B) The Department and the Contractor have agreed to vary the terms of the Original Contract as set out in this Agreement.
- (C) The Department's reference number for this Variation Agreement is [insert the variation number e.g. 01, 02, 03 etc.].

**IT IS AGREED** as follows:-

### **CONSIDERATION**

In consideration of each of the parties entering into this Agreement (such consideration being agreed by the parties to be good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged and agreed), the parties have agreed to vary the Original Contract in accordance with Clause [insert clause number relating to variation of agreement in Original Contract].

### **VARIATION OF THE ORIGINAL CONTRACT**

- 1.1 The parties agree with effect from the date of this Agreement the Original Contract shall be varied as set out in Annex 1 attached.

Subject to the variations set out in Annex 1, the Original Contract shall continue in full force and effect in all respects.

In addition to the amendments set out in Annex 1, the Original Contract shall be construed and interpreted with such further consequential amendments as are necessary to give effect to the amendments set out in Annex 1 of this Agreement, as if such further amendments were also expressly set out in Annex 1.

Except as provided in Clause 0 and Annex 1, the parties agree that no other liabilities, financial or otherwise, shall accrue to the Department because of this Variation Agreement.

## **2. SEVERABILITY**

The provisions of this Agreement are intended by the parties to be severable in the event that any part of it is held to be illegal or unenforceable (in whole or in part) and such part shall not affect the validity and enforceability of the remaining provisions or the remainder of the affected provision under this Agreement.

## **AUTHORITY AND COSTS**

Each party undertakes that it has full power and authority to enter into and shall be responsible for its own costs arising in relation to this Agreement.

## **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

2.1 Subject to Clause 0 below, this Agreement is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person who is not a party to this Agreement. Accordingly, the parties confirm that no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

It is the intention of the parties that any other department, officer or agency of the Crown, may as required from time to time act as the Department's agent in enforcing the Department's rights under this Agreement.

## **GOVERNING LAW AND JURISDICTION**

The parties agree that this Agreement and any dispute arising under or in any way connected with the subject matter of this Agreement (whether of a contractual or tortious nature or otherwise) shall be governed by and construed in accordance with the laws of England, and the parties submit to the jurisdiction of the English Courts.

**EXECUTED** by the parties on the first date in this Agreement.

**Authorised to sign for and on behalf of the  
Secretary of State for Education**

Signature

Date

Name in Capitals

Address in full

**Authorised to sign for and on behalf of the  
\*\*\*insert name of the Contractor\*\*\***

Signature

Date

Name in Capitals

Address in full

## ANNEX 1

### VARIATIONS TO ORIGINAL CONTRACT

All references to Clauses in this Annex 1 are to Clauses in the Original Contract.

1. [Clause [insert clause number from the Original Contract]] shall be amended to include the following definitions:]

[insert new definitions]

[Clause [insert clause number from the Original Contract]] shall be amended in its entirety to read:]

[insert the whole of the new clause]

[Clause [insert clause number from the Original Contract]] shall be deleted in its entirety.]

**[Note: When drafting the actual variations to the Original Contract you should refer to the clause number in the Original Contract. There are three main ways to vary the clauses, examples of which are given above. These are (1) including additional wording, (2) including an entirely new clause and (3) deleting a clause. The above can be repeated for as many clauses as need to be varied. It is important to specify if a clause comes from a Annex in the Original Contract. If the variation affects the funding, remember to include revised financial details.]**

