

39. TERMINATION

39.1 Termination by STA – Convenience

39.1.1 STA may at any time serve a Termination Notice on the Supplier, specifying it wishes to terminate this Agreement either in whole or in part or in respect of a particular Test Cycle provided that where a Test Cycle has commenced, STA shall not terminate the Agreement under this Clause 39.1 between the date on which the Key Stage 2 National Curriculum Assessments takes place in Schools and the Return of Results.

39.1.2 In the event STA serves a Termination Notice under Clause 39.1.1:

39.1.2.1 this Agreement (either in whole or in respect of the relevant Test Cycle, as appropriate) shall terminate no less than 3 months after the date of such Termination Notice;

39.1.2.2 the Supplier shall, in respect of the Test Cycle(s) being terminated, comply with any request made by STA on or after the date of the Termination Notice to not begin delivering, or cease delivering, any specified Milestones or other activities; and

39.1.2.3 STA shall pay to the Supplier:

(a) any Charges which have become due and payable in respect of Services delivered by the Supplier before the date that the Agreement is terminated in accordance with this Agreement; and

(b) any Supplier Breakage Costs

and the Supplier agrees and acknowledges that the sum of these amounts shall constitute its sole remedy against STA with regard to termination by STA under this Clause 39.1.

provided that where the termination is of part of the Agreement only:

39.1.2.4 the Charges payable pursuant to Clause 39.1.2.3(a) above shall be the Charges which have become due and payable in respect of prior Service delivery by the Supplier in accordance with this Agreement in respect of the terminated Services only; and

39.1.2.5 the principles for calculating the Supplier Breakage Costs shall be applied to the terminated part of the Agreement only such that the Supplier Breakage Costs payable pursuant to Clause 39.1.2.4 above reflect a fair and reasonable assessment of the Supplier Breakage Costs that have been reasonably and properly incurred by the Supplier as a direct result of the termination of that part of the Agreement only, including:

(a) the Losses shall relate to the terminated Services only; and

(b) Redundancy Costs shall relate to such costs incurred in respect of employees engaged in the terminated Services only; and

(c) the loss of profit calculation shall be applied to that element of the Charges that would have been earned by the Supplier in respect of the terminated Services only.

39.2 Termination/Suspension by STA – Boycott

39.2.1 STA may serve a written Termination Notice on the Supplier, specifying it wishes to terminate this Agreement either in whole or in part or in respect of a particular Test Cycle on, or following, the occurrence of any Boycott.

39.2.2 In the event that STA serves a Termination Notice under Clause 39.2.1:

39.2.2.1 this Agreement (either in whole or in respect of the relevant Test Cycle, as appropriate) shall terminate 20 days after the date of such Termination Notice or on the date specified in the Termination Notice, whichever date is the later;

39.2.2.2 the Supplier shall, in respect of the Test Cycle(s) being terminated, comply with any request made by STA on or after the date of the Termination Notice to not begin delivering, or cease delivering, any specified Milestones or other activities; and

39.2.2.3 STA shall pay to the Supplier:

(a) any Charges which have become due and payable in respect of prior Service delivery by the Supplier in accordance with this Agreement; and

(b) any Supplier Breakage Costs

and the Supplier agrees and acknowledges that the sum of these amounts shall constitute its sole remedy against STA with regard to termination by STA under this Clause 39.2.

39.2.3 While not in any way limiting STA's rights under Clause 39.2.1 above, STA reserves the right by serving notice to the Supplier, to suspend the Supplier's provision of the Services in whole or in part or in respect of a particular Test Cycle on, or following, the occurrence of any Boycott;

39.2.4 In the event that STA serves a notice to suspend the Services under Clause 39.2.3:

39.2.4.1 The Supplier shall cease to provide the Services in whole or in part or in respect of a particular Test Cycle on the date specified in notice of suspension issued by STA.

39.2.4.2 the Supplier shall resume the provision of the Services following such suspension by STA in accordance with Clause 39.2.3 on the date specified in any notice to the Supplier by STA requiring the Supplier to resume the provision of the Services.; and

39.2.4.3 STA shall pay to the Supplier:

(a) any Charges which have become due and payable in respect of prior Service delivery by the Supplier in accordance with this Agreement; and

(b) the greater of any Supplier Breakage Costs or supported by evidence at the request of STA, the actual and reasonable cost of the Supplier maintaining a state of preparedness to reinstate the Services following a period of suspension.

provided that where the suspension is of part of the Agreement only:

39.2.4.4 the Charges payable pursuant to 39.2.4.3(a) above shall be the Charges which have become due and payable in respect of prior Service delivery by the Supplier in accordance with this Agreement in respect of the suspended Services only;

39.2.4.5 the principles for calculating the Supplier Breakage Costs shall be applied to the suspended part of the Agreement only such that the Supplier Breakage Costs calculated pursuant to Clause 39.2.4.3 (b) above reflect a

AWR

fair and reasonable assessment of the Losses that have been reasonably and properly incurred by the Supplier as a direct result of the suspension of that part of the Agreement only, including:

- (a) the Losses shall relate to the suspended Services only;
- (b) Redundancy Costs shall relate to such costs incurred in respect of employees engaged in the suspended Services only; and
- (c) the loss of profit calculation shall be applied to that element of the Charges that would have been earned by the Supplier in respect of the suspended Services only; and
- (d) the actual and reasonable cost of the Supplier calculated shall be the actual and reasonable cost of the Supplier of maintaining a state of preparedness to reinstate the suspended Services only following a period of suspension of those Services only.

39.3 Termination by STA— Default

- 39.3.1 STA may serve a Termination Notice on the Supplier if the Supplier fails to complete Key Milestone 7 (Provision of Results Data and Return of Test Scripts) by the relevant Key Milestone Date in any Test Cycle which Termination Notice shall initiate the termination of this Agreement in whole or in part.
- 39.3.2 STA may at any time serve a written Termination Notice on the Supplier, initiating termination of this Agreement in whole or in part:
 - 39.3.2.1 if the Supplier commits a material Default, or series of Defaults the combination of which amounts to a **Persistent Default** (and for the purpose of this Clause 39.3.2, a series of Defaults which will be deemed as a Persistent Default shall be where the Supplier commits 3 Defaults which are either the same or similar in nature and character to one another in any period of 12 consecutive months);
 - 39.3.2.2 if a Default, or Persistent Default, by the Supplier results in significant damage to the reputation of STA or names under which STA operates (including "STA") as a result of: (a) publications in national newspapers or websites of national newspapers; or (b) broadcasts on national radio or national television, that are materially factually correct as to the nature of the relevant Default(s) and such disclosure has not been made by a Government department, STA, its employees, agents and subcontractors in breach of their obligations of confidentiality under this Agreement;
 - 39.3.2.3 if there is a Change of Control of the Supplier where:
 - (a) the Supplier has not obtained STA's prior written consent to the Change of Control, such consent not to be unreasonably withheld, (having regard, without limitation, to the following factors: the financial strength, reputation and moral standing of the proposed parent(s) and ultimate parent company of the Supplier; or
 - (b) a Regulatory Authority objects to the Change of Control;
 - 39.3.2.4 if an Insolvency Event occurs in respect of the Supplier;
 - 39.3.2.5 if permitted by Clause 8 (Certification of Key Milestones, Delays and Delay Credits);
 - 39.3.2.6 if permitted by Clause 15.1.4 (Tax Indemnity);

39.3.2.7 if permitted by Clause 33 (Fraud); or

39.3.2.8 if:

- (a) the Supplier fails to notify STA of a Financial Distress Event in accordance with paragraph 2.4(b) of Part 3 (Financial Distress) to Schedule 7 (Financial Matters); or
- (b) the Parties fail to agree a Financial Distress Service Continuity Plan in accordance without paragraphs 3.3. to 3.5 of Part 3 (Financial Distress) to Schedule 7 (Financial Matters); or
- (c) the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.6(c) of Part 3 (Financial Distress) to Schedule 7 (Financial Matters);

39.3.3 If STA serves a Termination Notice under this Clause 39.3, this Agreement shall terminate with immediate effect or on the date stated in the notice.

39.3.4 In each of the circumstances under this Clause 39.3 in which STA is entitled to serve a Termination Notice on the Supplier and save where it is expressly stated to the contrary in this Agreement, STA may in its reasonable opinion consider the circumstances which have entitled STA to serve a Termination Notice to be capable of remedy. Provided that STA hereby acknowledges and agrees that that the circumstances that entitle STA to terminate under Clause 15.1.4 (Tax Indemnity); Clause 26.2.2 (Disaster Recovery and Business Continuity); and paragraphs 2.4(b) (Credit Rating and Duty To Notify) and 4.1(a) (Termination Rights) of Part 3 (Financial Distress) of Schedule 7 (Financial Matters) respectively are hereby deemed to be capable of remedy by the Supplier. In such a case STA will issue a notice to the Supplier giving full particulars of the Default and requiring the same to be remedied in accordance with the Remedial Plan within 30 days of the date of such notice.

39.3.5 Where STA serves a Termination Notice under this Clause 39.3, save in respect of any update of the Exit Management Plan by the Supplier, STA will only be liable to make any further payments to the Supplier as referred to in Part 1 (Payment and Pricing) of Schedule 7(Financial Matters) or as set out in any CAN that are due and outstanding to the Supplier before the effective date of termination as set out in the Termination Notice.

39.4 Termination by STA — Other

39.4.1 STA may at any time serve a Termination Notice on the Supplier, initiating termination of this Agreement in whole or in part if permitted by Clause 27 (Force Majeure).

39.4.2 If STA serves a Termination Notice under Clause 39.4.1, this Agreement shall terminate with immediate effect, or if STA has specified in its Termination Notice that it does not wish to terminate this Agreement with immediate effect, the date one month after STA serves a further notice stating that this Agreement shall terminate (and, for the avoidance of doubt, such notice may be served at any time following the service of a Termination Notice under Clause 39.4.1). STA will pay the Supplier for all Services carried out by the Supplier until and on the effective date of termination.

39.5 General

Where STA serves a Termination Notice in respect of two or more Services and is entitled to give a further notice that termination will be effective one month after STA serves that further notice, STA shall be entitled to provide the Supplier one such further notice in respect of each of the relevant Services, so that each Service may terminate on different dates.

39.6 Termination by the Supplier - Default

- 39.6.1 The Supplier may serve a Termination Notice on STA if STA fails to pay an undisputed invoice and such invoice remains unpaid 90 days after receipt by STA of a written notice requiring STA to pay such invoice and stating the Supplier's intention to terminate this Agreement (such notice to be delivered after the due date for payment of the invoice).
- 39.6.2 If the Supplier serves a Termination Notice under Clause 39.6.1, this Agreement shall terminate with effect from the date specified in such Termination Notice, being no earlier than one month and no later than 12 months.
- 39.6.3 In the event that the Supplier serves a Termination Notice on STA under Clause 39.6.1 STA shall pay to the Supplier:
- 39.6.3.1 any Charges which have become due and payable in respect of prior Service delivery by the Supplier in accordance with this Agreement; and
- 39.6.3.2 any Supplier Breakage Costs
- and the Supplier agrees and acknowledges that the sum of these amounts shall constitute its sole remedy against STA with regard to termination by the Supplier under this Clause 39.6.
- 39.7 Termination as stipulated by the Public Contracts Regulations 2015 STA shall be entitled to terminate the Agreement upon notice to the Supplier:
- 39.7.1 pursuant to Clause 39.1 (Termination by STA – Convenience) where the Agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Regulations; or
- 39.7.2 pursuant to Clause 39.3.2.1 (Termination by STA – Default) if at any time during the Term it is discovered that the Supplier has, at the time of the Agreement award been in one of the situations referred to in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2) of the Regulations, and should therefore have been excluded from the procurement process that gave rise to this Agreement and the Supplier having been in one of such situations shall be deemed to be a material Default by the Supplier; or
- 39.7.3 pursuant to Clause 39. 1 (Termination by STA – Convenience) if at any time during the Term it is discovered that the Agreement should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty for the Functioning of the European Union.
- and for the avoidance of doubt, any of the actions that will give rise to termination under this Clause 39.7 shall be deemed to be incapable of remedy by the Supplier.
- 39.8 Cessation of the Agreement for Failure To Complete Set-Up
- 39.8.1 Unless the STA waives the condition referred to in Clause 4.1 (Set-Up), this Agreement shall automatically cease where the Supplier fails to complete Set-Up by 23:59 on 31st of August, 2019 and the effect of such cessation shall be as referred to in the said Clause 4.1.
40. **PREPARATION FOR, AND CONSEQUENCES OF, EXPIRY OR TERMINATION**
- 40.1 Exit Management Plan and Exit Information
- 40.1.1 Initial Exit Management Plan
- The Exit Management Plan set out in Schedule 9 (Exit Management Plan) describes the Parties' respective obligations with regard to the orderly transfer of the Services (and any relevant assets, materials, software, data, subcontracts, knowledge transfer and people

(if applicable)) to the Successor Operator on the expiry or termination of this Agreement and for the avoidance of doubt, the Exit Management Plan shall form part of STA Materials under this Agreement.

40.1.2 Updates to the Exit Management Plan.

The Supplier shall review the Exit Management Plan:

- 40.1.2.1 at least once in every Contract Year;
- 40.1.2.2 whenever there is a material change to the Services which shall include but not be limited to a change in Test timescales, the introduction of a new Test or a replacement Test for an existing Test, a change in Schools' obligations towards the administration and/or marking of Tests, a CAN in respect of a change and/or a change in the HMG Policy Framework April 2014;
- 40.1.2.3 within 10 Business Days of any System Development Acceptance;
- 40.1.2.4 within 10 Business Days of the service of a Termination Notice; and
- 40.1.2.5 prior to the Completion of Set-Up,

and consider what changes (if any) are necessary to reflect the current state of the Services and the Systems at the relevant point in time, and to ensure that the Exit Management is reasonably capable from time to time of being implemented promptly and complies with the requirements of the Product Description entitled "Project Close PD". Following any such review, the Supplier shall provide to STA a revised draft of the Exit Management Plan showing any proposed amendments. STA shall consider that revised draft, and shall notify the Supplier of any further amendments it believes are necessary. The Supplier shall incorporate all reasonable amendments requested by STA in the Exit Management Plan. When the revised Exit Management Plan is agreed, it shall be signed by both Parties, and shall supersede the then-current version of Schedule 9 (Exit Management Plan).

40.1.3 Exit Information Document.

The Supplier shall produce a document for STA containing the information specified in Clause 40.1.4 (the "Exit Information Document") within the following time periods:

- 40.1.3.1 during Set-Up;
- 40.1.3.2 6 months prior to the expiry or termination of this Agreement (the "Interim Information Date");
- 40.1.3.3 within 5 Business Days of the commencement of an Exit Phase (the "First Exit Information Date");
- 40.1.3.4 annually throughout the Term to coincide with the Supplier's review of the Exit Management Plan as referred to in Clause 40.1.2 (Updates to the Exit Management Plan); and
- 40.1.3.5 otherwise on request from STA (provided that such request must be made prior to the First Exit Information Date and STA shall not make a request under this Clause 40.1.3.5 more than three times).

40.1.4 Contents of the Exit Information Document.

The Exit Information Document shall contain the following information (the "Exit Information"):

- 40.1.4.1 details of all of the Supplier Assets and any other assets used by the Supplier in the provision of the Services, including, where applicable, their respective net book values, location, condition and age, whether they are shared with other customers of the Supplier and whether the Supplier considers them to be Supplier Assets;
- 40.1.4.2 details of all of the Supplier Agreements, agreements with Sub-Contractors and any other agreements used for the provision of the Services including, where applicable, information about whether such agreements with Sub-Contractors or other agreements are used by the Supplier to provide services to other customers of the Supplier except to the extent that these details are subject to an obligation of confidence owed by the Supplier to a third party that is not one of the Supplier's Group Companies (in which case the Supplier shall at least provide details of the type of items or services being contracted for under the relevant agreements with Sub-Contractors or other agreement);
- 40.1.4.3 details of all of the Software and any other Intellectual Property Rights used in the provision of the Services or developed as part of the Services;
- 40.1.4.4 details of any STA Data (including data mapping information) and STA Materials used in the provision of the Services or developed as part of the Services;
- 40.1.4.5 details of any ongoing projects or other work carried out pursuant to this Agreement; and
- 40.1.4.6 in respect of all individuals engaged in providing the Services, such information as STA may reasonably request (Subject to the GDPR), but including in an anonymised format full and accurate details of:
- (a) the total number of such individuals;
 - (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
 - (c) their ages, dates of commencement of employment or engagement, and gender;
 - (d) their remuneration and other benefits;
 - (e) their other terms and conditions of engagement and/or employment (including their relevant contractual notice periods and any other terms relating to termination of employment, redundancy procedures and redundancy payments);
 - (f) their job titles and job descriptions;
 - (g) details of any such individuals on long term sickness absence, parental leave, maternity leave, paternity leave or other authorised long term absence;
 - (h) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
 - (i) details of who reports to each employee and who each employee reports to;
 - (j) any collective agreements which apply to them;

- (k) the identity of the employer or relevant contracting Party;
- (l) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

40.1.4.7 copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

40.1.4.8 any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations; being referred to as the **"Staffing Information"**

40.1.5 Updates to the Exit Information Document.

40.1.5.1 The Supplier shall provide an updated copy of the Exit Information Document within 5 Business Days (or such other period as the Parties may agree) of receiving a request for such information from STA, the service of a Termination Notice or upon the date 3 months before the scheduled date for expiry of the Term (as set out in the then current Operational Delivery PID).

40.1.5.2 The Supplier shall update the Exit Information: (i) in the period up to and including the First Exit Information Date, immediately prior to providing the information to STA; and (ii) during any Exit Phase, every month. The Supplier shall also, during the Exit Phase, provide the Exit Information to STA or to a Successor Operator on request.

40.2 Costs of Assistance on Termination or Expiry

40.2.1 Save in respect of any provision of the Services during an Exit Phase, for which the Supplier shall continue to be remunerated in accordance with Part 1 (Payment and Pricing) of Schedule 7 (Financial Matters) in the event that this Agreement:

40.2.1.1 is terminated by STA pursuant to Clause 39.3 (Termination by STA - Default), then the Supplier shall bear both Parties' costs in carrying out Clause 40.3 (Provision of Assistance on Termination or Expiry);

40.2.1.2 is terminated by STA pursuant to Clause 39.4 (Termination by STA - Other), then STA shall bear its own costs in carrying out Clause 40.3 (Provision of Assistance on Termination or Expiry);

40.2.1.3 expires naturally or is terminated by STA in all other cases, then STA shall bear both Parties' costs (save that STA shall only be liable to pay the Supplier's costs up to the maximum value specified in the Exit Management Plan at the time of expiry or termination) in carrying out Clause 40.3 (Provision of Assistance on Termination or Expiry); or

40.2.1.4 is terminated by the Supplier pursuant to Clause 39.6 (Termination by the Supplier - Default), then STA shall bear both Parties' costs in carrying out Clause 40.3 (Provision of Assistance on Termination or Expiry).

40.2.2 References in Clause 40.2.1 to "costs" shall be deemed to refer only to direct, reasonable and verifiable costs (which in the case of the Supplier shall be charged on a Time and Materials Basis). Both Parties shall use all reasonable endeavours to mitigate such costs and, to the extent reasonably practical, one Party shall notify the other Party of, and obtain its consent to, such costs prior to incurring them.

40.3 Provision of Assistance on Termination or Expiry

R

- 40.3.1 In connection with any expiry or termination of this Agreement or termination of a Service for whatever reason and during the Exit Phase, the Parties shall perform their respective obligations as stated in the Exit Management Plan, and without prejudice to the foregoing obligation:
- 40.3.1.1 the Supplier shall provide to STA and the Successor Operator all reasonable assistance requested by STA (including assisting and complying with the Exit Management Plan) for the transfer of the relevant Service(s) from the Supplier to the Successor Operator with the minimum of disruption, and so as to prevent or mitigate any inconvenience to STA or the Schools;
 - 40.3.1.2 the Supplier shall provide a complete copy of the Product Descriptions;
 - 40.3.1.3 at STA's request, the Supplier shall provide any additional information required by STA in order for it to understand any data or information provided by the Supplier;
 - 40.3.1.4 at the request of STA, the Supplier shall enter into a period of parallel running between the Services and the services provided by the Successor Operator and shall use all reasonable endeavours to comply with any request by STA to phase the transfer of the Service to the Successor Operator; and
 - 40.3.1.5 the Supplier shall provide to the Successor Operator all the data of STA relevant to the terminated Services (including the STA Data) in its then current format or in a format reasonably nominated by STA (including the provision of a number of interim Datafeeds consolidating Accurate Pupil Level Data and Teacher Assessment data into a single Datafeed), together with all related documentation, and any other information and all copies thereof owned by STA. Where the STA Data is provided in an alternative format nominated by STA, then the Supplier shall use its reasonable endeavours to ensure that the accuracy and completeness of the STA Data is not adversely affected by the conversion to that format and STA shall pay the Supplier's reasonable costs incurred in such reformatting. At the request of STA, the Supplier shall cease to use such STA Data. The Supplier shall destroy copies of such STA Data on request by STA (but not until such request is made).
- 40.3.2 For the avoidance of doubt, the Supplier's obligations under this Clause 40 shall only apply if STA has paid all undisputed amounts due to the Supplier under this Agreement.
- 40.3.3 The Supplier warrants to STA that all the information provided under Clause 40.1 (Exit Management Plan and Exit Information) and 40.3 (Provision of Assistance on Termination or Expiry) shall conform to the requirements of this Agreement or, where there are no such requirements, be prepared in accordance with Good Industry Practice.
- 40.3.4 Except as otherwise stated in the Exit Management Plan, the obligations stated in this Clause 40.3 (Provision of Assistance on Termination or Expiry) and Clause 40.4 (The Supplier Assets, Agreements and Software) shall be in addition to, and not in substitution for, the provision of the Services and, subject to the continued payment of the Charges in accordance with the terms of this Agreement, the Supplier shall continue to provide and STA shall continue to receive on the terms and conditions of this Agreement:
- 40.3.4.1 the Services during the Term; and
 - 40.3.4.2 if required by STA, all or part of the Services for the duration of the Exit Phase or such shorter period as STA may require.

40.4 The Supplier Assets, Agreements and Software

40.4.1 On expiry or termination of this Agreement, or termination of a Service for any reason, the Supplier shall:

40.4.1.1 transfer or procure the transfer (as appropriate) of those Supplier Assets used in the relevant Services to STA or to a Successor Operator (at STA's direction) for a consideration of the net book value (such net book value to be agreed or failing agreement to be calculated using standard accounting procedures as certified by the auditors to STA); and

40.4.1.2 where it has not already done so pursuant Clause 30 (Escrow), novate or assign the Supplier's interest in those Supplier Agreements used in the relevant Services to STA or to a Successor Operator (at STA's direction).

40.4.2 During an Exit Phase, the Supplier shall not dispose of any Supplier Assets used in the relevant Services or terminate or vary any of the Supplier Agreements used in the relevant Services unless it has the prior written consent of STA; and

40.4.3 If required by STA (or a Successor Operator, as appropriate), the Supplier shall undertake any support, maintenance or additional software development (including updates and new releases in order to comply with any Regulatory Change) in relation to the Supplier Software, which shall be subject to a reasonable additional charge being agreed in advance based on the Supplier's then standard day rates for such development work.

41. EMPLOYEES

Relevant Transfers

41.1 STA and the Supplier agree that:

(a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

(b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Subcontractor and each such Transferring Former Supplier Employee.

41.2 STA shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and STA shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

Former Supplier Indemnities

41.3 Subject to Clause 41.4, STA shall procure that each Former Supplier shall indemnify the Supplier and any Notified Subcontractor against all Employment Losses arising from the Former Supplier's failure to perform or discharge all its obligations in respect of the Transferring Former Supplier Employees (or, where applicable any employee representative as defined in the Employment Regulations) and their representatives for its own account and against all Employment Losses arising from or as a result of:

(a) any act or omission by the Former Supplier arising before the Relevant Transfer Date;

- (b) all emoluments and outgoings in relation to Transferring Former Supplier Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, pension contributions and otherwise) payable in respect of any period before the Relevant Transfer Date;
 - (c) any claim arising out of the Former Supplier making, or a proposal by the Former Supplier to make, a material change to any benefit, term or condition or working condition of any such Transferring Former Supplier Employee on or before the Relevant Transfer Date;
 - (d) any act or omission of the Former Supplier in relation to its obligations under Regulations 11 and 13 of TUPE, or in respect of an award of compensation under Regulation 15 of TUPE relating to such act or omission, save to the extent that the liability or relevant part thereof arises from STA's or the Supplier's failure to comply with Regulation 13(4) of TUPE; and
 - (e) any statement communicated to or action done to or in respect of any Transferring Former Supplier Employee by the Former Supplier or any relevant Subcontractor before, on or after the Relevant Transfer Date and regarding the transfer which has not been agreed in advance with STA in writing.
- 41.4 The indemnities in Clause 41.3 shall not apply to the extent that the Employment Losses arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employment Losses:
- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
 - (b) arising from the failure by the Supplier and/or any Subcontractor to comply with its obligations under the Employment Regulations.
- 41.5 If any person who is not identified by STA as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by STA as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, or shall procure that the Notified Subcontractor shall, within 5 Business Days of becoming aware of that fact, give notice in writing to STA and, where required by STA, to the Former Supplier; and
 - (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Business Days of the notification by the Supplier and/or the Notified Subcontractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 41.6 If an offer referred to in Clause 41.5(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or STA, the Supplier shall, or shall procure that the Notified Subcontractor shall, immediately release the person from his/her employment or alleged employment.
- 41.7 If by the end of the 15 Business Day period specified in Clause 41.5 (b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Subcontractor may within 5 Business Days give notice to terminate the employment or alleged employment of such person.

41.8 Subject to the Supplier and/or any Notified Subcontractor acting in accordance with the provisions of Clauses 41.5 and 41.7 and in accordance with all applicable proper employment procedures set out in Law, STA shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Subcontractor (as appropriate) against all Employment Losses arising out of the termination of employment pursuant to the provisions of Paragraph 41.7 provided that the Supplier takes, or shall procure that the Notified Subcontractor takes, all reasonable steps to minimise any such Employment Losses.

41.9 The indemnity in Clause 41.8 shall not apply to;

41.9.1 any claim for:

- (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Subcontractor; or

41.9.2 any claim that the termination of employment was unfair because the Supplier and/or Notified Subcontractor neglected to follow a fair dismissal procedure

41.10 If any such person as is described in Clause 41.5 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Subcontractor within the time scales set out in Clause 41.7, such person shall be treated as having transferred to the Supplier or Notified Subcontractor and the Supplier shall, or shall procure that the Notified Subcontractor shall, comply with such obligations as may be imposed upon it under the Law.

41.11 The indemnity in Clause 41.8 shall apply only where the notification referred to in Clause 41.5 is made by the Supplier and/or any Notified Subcontractor (as appropriate) to STA and, if applicable, the Former Supplier, within 6 months of the Effective Date.

Supplier Indemnities and Obligations

41.12 Subject to Clause 41.10, the Supplier shall indemnify STA and/or the Former Supplier against any Employment Losses in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Supplier or any Subcontractor whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:
 - (ii) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (iii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or

a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- (d) any proposal by the Supplier or a Subcontractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - (e) any statement communicated to or action undertaken by the Supplier or a Subcontractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with STA and/or the Former Supplier in writing;
 - (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - (g) a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
 - (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 41.13 The indemnities in Clause 41.9 shall not apply to the extent that the Employment Losses arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employment Losses arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 41.14 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

Information

- 41.15 The Supplier shall, and shall procure that each Subcontractor shall, promptly provide to STA and/or at STA's direction, to the Former Supplier, in writing such information as is necessary to enable STA and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. STA shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Subcontractor in writing such information as is necessary to enable the Supplier and each Notified Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

Principles of Good Employment Practice

- 41.16 The Supplier shall, and shall procure that each Subcontractor shall, comply with any requirement notified to it by STA relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - (d) the New Fair Deal.
- 41.17 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Clause 41.16 shall be agreed in accordance with the Change Control Procedure.

Obligation to Procure Act by a Former Supplier

- 41.18 Notwithstanding any other provisions of this Clause 41, where in this Clause 41 STA accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that STA's contract with the Former Supplier contains a contractual right in that regard which STA may enforce, or otherwise so that it requires only that STA must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

Pensions

- 41.19 The Supplier shall, and shall procure that each Subcontractor shall, comply with the following pension provisions in respect of any Transferring Former Supplier Employees.

Participation

- 41.20 The Supplier undertakes to enter into the Admission Agreement in respect of Fair Deal Employees.
- 41.21 The Supplier and STA undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees.
- 41.22 The Supplier shall bear its own costs and all costs that STA reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

Future Service Benefits

- 41.23 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 41.24 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 41.25 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to STA, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by STA in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 41.26 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

Funding

- 41.27 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 41.28 The Supplier shall indemnify and keep indemnified STA on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

Bulk Transfer

- 41.29 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of Clause 41.25 above, the Supplier agrees to:
- 41.29.1 Fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension schemes actuaries or by the Government Actuary's Department;
- 41.29.2 Instruct any such broadly comparable pension scheme actuaries to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or STA may reasonably require to enable the Successor Operator to participate in the Schemes in respect of any Fair Deal Employees that remain eligible for New Fair Deal protection following a relevant future transfer;
- 41.29.3 Allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a relevant future transfer, for the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than [the amount required by the Schemes to fund day for day service/ an amount calculated on terms no less favourable than the bulk transfer terms its scheme received], the Supplier agrees to make good any such shortfall;

- 41.29.4 Indemnify the Schemes, and/or STA on demand for any shortfall which arises as a consequence of Clause 41.29.3 above.

Provision of Information

- 41.30 The Supplier and STA respectively undertake to each other:
- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in these Clauses 41.19 to 41.291 and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
 - (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in these Clauses 41.19 to 41.29 without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

Indemnity

- 41.31 The Supplier undertakes to STA to indemnify and keep indemnified STA on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

Employer Obligation

- 41.32 The Supplier shall comply with the requirements of [Part 1 of] the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

Subsequent Transfers

- 41.33 The Supplier shall:
- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
 - (b) provide all such co-operation and assistance as the Schemes and the Successor Operator and/or STA may reasonably require to enable the Successor Operator to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
 - (c) for the period either
 - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
 - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Successor Operator or STA, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of STA (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

- 41.34 NOT USED

Employment Exit Provisions

- 41.35 The Supplier agrees that within 20 Business Days of the earliest of:
- 41.35.1 receipt of a notification from STA of a Service Transfer or intended Service Transfer; or
 - 41.35.2 receipt of the giving of notice of early termination of this Agreement or any part thereof; or
 - 41.35.3 the date which is 12 months before the end of the Term; and
 - 41.35.4 receipt of a written request from STA at any time (provided that STA shall only be entitled to make one such request in any period of six consecutive months), it will:
 - 41.35.4.1 provide the Supplier's Provisional Staff List and the Staffing Information in relation to the Supplier's Provisional Staff List to STA and it shall provide an updated Supplier's Provisional Staff List at such intervals as are reasonably requested by STA; and
 - 41.35.4.2 procure that any Subcontractor will provide the relevant Subcontractor's Provisional Staff List and the relevant Subcontractor's Staffing Information and provide updated versions of such at intervals as reasonably requested by STA.
- 41.36 At least twenty (20) Business Days prior to the Service Transfer Date, the Supplier shall provide to STA or at the direction of STA, to any Successor Operator:
- 41.36.1 the Supplier's Final Staff List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees and Staffing Information in relation to the Supplier's Final Staff List (insofar as such information has not been previously provided); and
 - 41.36.2 procure that any relevant Subcontractor shall prepare and provide the relevant Subcontractor's Final Staff List and Staffing Information.
 - 41.36.3 STA shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Supplier's Staffing Information; the Subcontractor's Provisional Staff List, the Subcontractor's Final Staff List and the Subcontractor's Staffing Information for the purpose of providing information to any prospective Successor Operator.
- 41.37 Upon reasonable request by STA and subject to compliance with the GDPR, the Supplier shall provide, and shall procure that any relevant Subcontractor shall provide to STA, or at the request of STA, provide the Successor Operator, with access (on reasonable notice and during normal working hours) to such employment records as STA reasonably requests and shall allow STA or the Successor Operator to have copies of such employment records provided that STA imposes on the Successor Operator obligations of confidence that are no less onerous than STA owes to the Supplier in relation to that information. STA shall procure that any Successor Operator to whom any such employment records have been disclosed under this Clause 41.37, promptly destroys or returns to the Supplier all copies of such information upon ceasing to be a part of the re-procurement of the Services and/or the procurement of services which are substantially similar to the Services.
- 41.38 The Supplier warrants for the benefit of STA and any Successor Operator, that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information shall be true and accurate in all material respects.
- 41.39 The Supplier shall procure that the Subcontractor's Provisional Staff List, the Subcontractor's Final Staff List and the Staffing Information shall be true and accurate in all material respects.
- 41.40 From the date of the earliest event referred to in Clauses 41.35.1 to 41.35.3 above, the Supplier agrees that it shall not, and shall procure that any relevant Subcontractor shall not, assign any person to the provision of the Services who is not listed in the Supplier's Provisional Staff List and/or

the Subcontractor's Provisional Staff List (as appropriate) and shall not without the prior written consent of STA (such consent not to be unreasonably withheld or delayed):

- 41.40.1 increase or reduce the total number of employees listed on the Supplier 's Provisional Staff List and/or the relevant Subcontractor 's Provisional Staff List;
- 41.40.2 make, promise, propose or permit any material changes to the benefits, terms and conditions or working conditions of any employees listed on the Supplier's Provisional Staff List and/or a Subcontractor's Provisional Staff List (including any payments connected with the termination of employment);
- 41.40.3 increase the proportion of working time spent on the Services (or the relevant part thereof) by any of the Supplier employees and/or Subcontractor personnel;
- 41.40.4 introduce any new contractual or customary practice concerning or resulting in the making of any lump sum payment on the termination of employment of any employees listed on the Supplier 's Provisional Staff List and/or the relevant Subcontractor 's Provisional Staff List;
- 41.40.5 replace or re-deploy any Supplier employees and/or Subcontractor personnel listed on the Supplier's Provisional Staff List and/or the relevant Subcontractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment of any persons on the Supplier 's Provisional Staff List and/or the relevant Subcontractor 's Provisional Staff List save for replacing voluntary resignations or staff terminated on the grounds of conduct or capability to satisfy the fulfilment of previously agreed work streams provided that any such replacement is employed on substantially the same terms and conditions of employment as the person he/she replaces;
- 41.40.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List and/or the relevant Subcontractor's Provisional Staff List save by due disciplinary process; and

the Supplier shall promptly notify or procure that a relevant Subcontractor shall promptly notify STA or, at the request of STA, the Successor Operator of any notice to terminate employment given by the Supplier or any Subcontractor or received from any persons listed on the Supplier's Provisional Staff List and/or the relevant Subcontractor's Provisional Staff List regardless of when such notice takes effect.

- 41.41 During the Term, the Supplier shall provide, and shall procure that each Subcontractor shall provide, to STA any information STA may reasonably require relating to the manner in which the Services are organised, which shall include:

- 41.41.1 the numbers of employees engaged in providing the Services;
- 41.41.2 the percentage of time spent by each employee engaged in providing the Services;
- 41.41.3 the extent to which each employee qualifies for membership of the Schemes or any broadly comparable scheme set up pursuant to Clause 41.25 (as appropriate) and
- 41.41.4 a description of the nature of the work undertaken by each employee by location.

- 41.42 The Supplier shall provide, and shall procure that each Subcontractor shall provide, all reasonable cooperation and assistance to STA and/or any Successor Operator to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Business Days following the Service Transfer Date, the Supplier shall and/or shall procure that a relevant Subcontractor shall provide to STA or, at the direction of STA, to any Successor Operator, in respect of each person on the Supplier 's Final Staff List and/or the Subcontractor 's Final Staff List, who is a Transferring Supplier Employee:

- 41.42.1 a copy of the most recent month's pay slip data;
- 41.42.2 details of cumulative pay for tax and pension purposes;
- 41.42.3 details of cumulative tax paid;
- 41.42.4 tax code;
- 41.42.5 details of any voluntary deductions from pay; and
- 41.42.6 bank/building society account details for payroll purposes.

Employment Regulations Exit Provisions

- 41.43 STA and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by STA or a Successor Operator. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. STA and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Successor Operator and each such Transferring Supplier Employee.
- 41.44 The Supplier shall, and shall procure that any Subcontractor shall, perform and discharge all its obligations in respect of the Transferring Supplier Employees and their representatives arising under the Employment Regulations in respect of the period up to and including the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Successor Operator.
- 41.45 Subject to Clause 41.46, the Supplier shall indemnify STA and any Successor Operator against all Employment Losses in respect of any Transferring Supplier Employee (or where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
 - 41.45.1 any act or omission by the Supplier or any Subcontractor whether occurring before, on or after the Service Transfer Date;
 - 41.45.2 the breach or non-observance by the Supplier or any Subcontractor occurring on or before the Service Transfer Date of:
 - 41.45.2.1 any collective agreement applicable to the Transferring Supplier Employees; and/or
 - 41.45.2.2 any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
 - 41.45.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - 41.45.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any

financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- 41.45.4.1 in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - 41.45.4.2 in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to STA and/or the Successor Operator, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
 - 41.45.5 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
 - 41.45.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee for whom it is alleged STA and/or the Successor Operator may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 41.45.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by STA and/or the Successor Operator to comply with regulation 13(4) of the Employment Regulations.
- 41.46 The indemnities in Clause 41.45 shall not apply to the extent that the Employee Losses arise or are attributable to an act or omission of the Successor Operator whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Losses:
- 41.46.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Successor Operator to occur in the period on or after the Service Transfer Date); or
 - 41.46.2 arising from the Successor Operator's failure, to comply with its obligations under the Employment Regulations.
- 41.47 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Subcontractor to the Successor Operator pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 41.47.1 STA shall procure that the Successor Operator shall, within 5 Business Days of becoming aware of that fact, give notice in writing of this to the Supplier;
 - 41.47.2 the Supplier may offer (or may procure that a Subcontractor may offer) employment to such person within 15 Business Days of the notification by the Successor Operator or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 41.48 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, STA shall procure that the Successor Operator shall immediately release or procure the release of the person from his/her employment or alleged employment.

41.49 If after the 15 Business Day period specified in Clause 41.47.2 has elapsed:

41.49.1 no such offer of employment has been made;

41.49.2 such offer has been made but not accepted; or

41.49.3 the situation has not otherwise been resolved

STA shall advise the Successor Operator that it may within 5 Business Days give notice to terminate the employment or alleged employment of such person.

41.50 Subject to the Successor Operator acting in accordance with the provisions of Clauses 41.47 to 41.49, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Successor Operator against all Employment Losses arising out of the termination pursuant to the provisions Clause 41.49 provided that the Successor Operator takes all reasonable steps to minimise any such Employment Losses.

41.51 The indemnity in Clause 41.50 shall not apply to any claim:

41.51.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

41.51.2 for equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in any case in relation to any alleged act or omission of the Successor Operator;

in any case in relation to any alleged act or omission of the Successor Operator.

41.51.3 that the termination of employment was unfair because the Successor Operator neglected to follow a fair dismissal procedure; and

41.52 The indemnity in Clause 41.50 shall apply only where the notification referred to in Clause 41.47.1 is made by the Successor Operator to the Supplier within 6 months of the Service Transfer Date.

41.53 If any such person as is described in Clause 41.47 is neither re-employed by the Supplier or any Subcontractor nor dismissed by the Successor Operator within the time scales set out in Clauses 41.47 to 41.49, such person shall be treated as a Transferring Supplier Employee and the Successor Operator shall comply with such obligations as may be imposed upon it under applicable Law.

41.54 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

41.54.1 the Supplier and/or any Subcontractor; and

41.54.2 the Successor Operator.

41.55 The Supplier shall, and shall procure that each Subcontractor shall, promptly provide to STA and any Successor Operator, in writing such information as is necessary to enable STA and the Successor Operator to carry out their respective duties under regulation 13 of the Employment Regulations. STA shall procure that the Successor Operator shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each

Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

41.56 Subject to Clause 41.57, STA shall procure that the Successor Operator indemnifies the Supplier against any Employment Losses in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

- 41.56.1 any act or omission of the Successor Operator;
- 41.56.2 the breach or non-observance by the Successor Operator on or after the Service Transfer Date of:
 - 41.56.2.1 any collective agreement applicable to the Transferring Supplier Employees; and/or
 - 41.56.2.2 any custom or practice in respect of any Transferring Supplier Employees which the Successor Operator is contractually bound to honour;
- 41.56.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Successor Operator to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 41.56.4 any proposal by the Successor Operator to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Successor Operator on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 41.56.5 any statement communicated to or action undertaken by the Successor Operator to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 41.56.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 41.56.6.1 in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - 41.56.6.2 in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Subcontractor, to the Successor Operator to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
 - 41.56.6.3 a failure of the Successor Operator to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
 - 41.56.6.4 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or

AWK

omission of the Successor Operator in relation to obligations under regulation 13 of the Employment Regulations.

- 41.57 The indemnities in Clause 41.56 shall not apply to the extent that the Employment Losses arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employment Losses arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations

42. **SURVIVAL OF CLAUSES**

Expiry or termination of this Agreement shall not affect either of the Party's accrued rights or liabilities or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after expiry or termination, including Clauses 1 (Definitions and Interpretation), 14 (Charges), 15 (Taxation), 32.3.2 (Specially Written Software), 32.4 (Licensing of the Supplier Materials), 32.5 (Intellectual Property Indemnity), 34 (Confidentiality), 35 (Limitations of Liability), 36 (Insurance), 37 (Governing Law, Dispute Resolution and Arbitration), 39 (Termination), 40 (Preparation for, and Consequences of, Expiry or Termination), 41 (Employees), 42 (Survival of Clauses), 46 (Third Party Rights) and 47 (General).

43. **ASSIGNMENT AND NOVATION**

- 43.1 Subject to Clauses 43.2 and 43.3, neither Party shall assign, novate or otherwise transfer this Agreement to any person without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 43.2 STA shall be entitled to assign or novate this Agreement to a body or bodies which succeeds STA or undertakes equivalent functions or duties in accordance with an Act of Parliament, a direction of a government body or a Regulatory Authority's request, without the Supplier's consent and the Supplier hereby agrees to enter into such documents as are reasonably necessary to give effect to this purpose.
- 43.3 Having obtained the prior written consent of STA to do so, the Supplier shall be entitled to novate this Agreement to a third party where the conditions of Regulation 72(1)(d)(ii) of the Public Contracts Regulations 2015 are met.

44. **SUBCONTRACTING**

- 44.1 Subject to Clause 44.3, the Supplier shall not, without STA's prior written consent (such consent not to be unreasonably withheld), subcontract any of its rights and obligations under this Agreement and/or where it has obtained STA's consent to subcontract, shall not make any material variation to such a subcontract arrangement.
- 44.2 Circumstances in which it shall be reasonable for STA to withhold consent under Clause 44.1 include but are not limited to circumstances where:
- 44.2.1 the Supplier does not provide information reasonably requested by STA about the proposed Subcontractor;
 - 44.2.2 the subcontract cannot be assigned or novated to STA, at STA's option, without additional payment or consent on the expiry or termination of this Agreement;
 - 44.2.3 the subcontract is not expressed to give third party rights to STA;
 - 44.2.4 STA reasonably believes that the subcontracting may damage the reputation of STA or the National Curriculum Assessments, having regard to, without limitation, the following factors: the financial strength, reputation and moral standing of the subcontractor and whether the subcontractor is the type of organisation that usually deals with government organisations;
 - 44.2.5 STA has previously received poor service from the proposed Subcontractor; and

- 44.2.6 the proposed Subcontractor indicates that it will not allow STA, any Regulatory Authority and/or their respective representatives to audit the Subcontractor.
- 44.3 The Supplier shall be entitled to subcontract marking services to Markers without STA's prior written consent where the relevant subcontracts are in a form that has been pre-approved by STA in accordance with the Approvals Process;
- 44.4 STA's consent to any such subcontracting shall not relieve the Supplier of its obligations to STA under this Agreement and the Supplier shall be fully responsible to STA for the acts or omissions of any of its Subcontractors and their employees.
- 44.5 STA's consent under Clause 44.1 is expressly agreed by STA not to be required in relation to:
- 44.5.1 contracts in place as at the Effective Date; or
- 44.5.2 in relation to any subcontracting to a Group Company of the Supplier.
- 44.6 If STA at any time considers that:
- 44.6.1 a Subcontractor's performance of its obligations is unsatisfactory; or
- 44.6.2 the relationship between STA and the Subcontractor is adversely affecting the relationship between STA and the Supplier,
- then STA may require the Parties to meet to discuss STA's concerns and the Supplier shall use its best endeavours to address those concerns.
- 44.7 If there is a Change of Control of a Key Subcontractor and STA has not given its prior written approval to the Supplier for such Change of Control, STA may, if in the reasonable view of STA such Change of Control will affect the ability of the Supplier to provide the Services, within 90 days following the date when it becomes aware of such Change of Control, require the Supplier to promptly cease subcontracting all or part of the Services to that Key Subcontractor. The exercise by STA of its right under this Clause 44.7 shall not relieve the Supplier of any of its obligations under this Agreement, including its obligation to provide the Services.
- 44.8 Without prejudice to STA's rights under Clause 38 (Audit, Open Book Accounting and Documents), STA shall be entitled to request copies of the Supplier's contracts with its Key Subcontractors, provided always that the Supplier may redact from such copies, information, disclosure of which may lead to proceedings against the Supplier for an actionable breach of confidence.
- 44.9 The Supplier shall inform STA of any material changes to the contracts the Supplier has in place with its Key Subcontractors (including any early termination or cancellation of such contracts) from time to time.
- 44.10 When the Supplier has subcontracted its rights and/or obligations under this Agreement and such subcontract is expressed to give third party rights to STA, STA shall only enforce its third party rights after giving the Supplier a reasonable opportunity to enforce its rights first.
- 44.11 The Supplier shall allow and facilitate STA to have direct access to the Supplier's Subcontractors where this is required by STA.
- 44.12 Except where STA has given its prior written consent, the Supplier shall ensure that all Supplier Agreements contain provisions:
- 44.12.1 granting a right under the Contracts (Rights of Third Parties) Act 1999 for STA to enforce any provisions under the Supplier Agreement which are capable of conferring a benefit upon STA;
- 44.12.2 enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Supplier Agreement to STA or any Successor Operator without restriction (including any need to obtain any consent or approval) or payment by STA;

- 44.12.3 restricting the ability of the Subcontractor to subcontract all or any part of the services provided to the Supplier under the Supplier Agreement without the prior written consent of STA;
- 44.12.4 to the effect that neither the Supplier nor the Subcontractor shall terminate or materially amend the terms of any Supplier Agreement without STA's prior written consent, which shall not be unreasonably withheld or delayed and without first giving STA a reasonable time to discuss this which shall in any event be no more than 15 Business Days;
- 44.12.5 enabling the Supplier, STA or any other person on behalf of STA to step-in on substantially the same terms as are set out in Clause 11 (Step-In);
- 44.12.6 requiring the Subcontractor to notify STA of any failure by the Supplier to comply with Clause 14.3.4 (Payment Terms);
- 44.12.7 containing obligations no less onerous on the Subcontractor than those imposed on the Supplier under this Agreement in respect of:
- (i) data protection requirements set out in Clause 21.1 (Protection of Personal Data);
 - (ii) FOIA requirements set out in Clause 21.2 (Freedom of Information);
 - (iii) the prevention of fraud as set out in Clause 33 (Fraud);
 - (iv) maintaining confidentiality pursuant to Clause 34 (Confidentiality);
 - (v) the keeping of records in respect of the services being provided under the Supplier Agreement, including the maintenance of Open Book Data as set out in Clause 38 (Audit, Open Book Accounting and Documents) and Part A (Financial Transparency Objectives and Open Book Data) of Part 4 (Financial Reports and Audit Rights) of Schedule 7 (Financial Matters); and
 - (vi) the prevention of corruption as set out in Clause 45 (Prevention of Corruption);
- 44.12.8 giving the Supplier the right to audit computers (including those used by Markers) to access the System and any portals maintained by the Supplier in connection with the Services in order to verify compliance with the Subcontractor's obligations of non-disclosure of the National Curriculum Assessments Materials and its other confidentiality obligations in relation to this Agreement;
- 44.12.9 consistent with the Supplier's obligations in this Agreement to procure or ensure that Markers and other Subcontractors do or do not do certain actions including but not limited to Clause 25.4 (Security), Clause 38.1 (Retention of Documents) and Clause 41 (Employees);
- 44.12.10 in relation to the respective Supplier Agreements between the Supplier and the Markers, confirming the consent of the Markers to:
- (i) the Supplier making their Personal Data including sensitive Personal Data (as defined by the GDPR) available to STA for inclusion in the Marker Register; and
 - (ii) STA's processing of their Personal Data including sensitive Personal Data (as defined by the GDPR) which will involve making the Marker Register available to any Successor Operator and any other service providers that are engaged by STA to carry out the marking or assessments. Such provision in the Supplier Agreements shall be in the form set out in Appendix 4 of Part 1 (Statement of Requirements) of Schedule 4 (Services); and
- 44.12.11 any other provisions as may be notified by STA to the Supplier from time to time.

provided that Clauses 44.12.4, 44.12.5, 44.12.6 and 44.12.7(v) respectively shall not apply in respect of the Supplier Agreements between the Supplier and Markers.

45. PREVENTION OF CORRUPTION

45.1 The Supplier shall not:

45.1.1 offer or agree to give any person working for or engaged by STA or any other Crown Body any gift or other consideration which could act as an inducement or a reward for any act or failure to act connected to this Agreement, or any other agreement between the Supplier and STA or any Crown Body, including its award to the Supplier and any of their rights and obligations contained within it; nor

45.1.2 enter into this Agreement if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by STA or any other Crown Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to STA before execution of this Agreement.

45.2 If the Supplier (including any employee of the Supplier, any Subcontractor or agent, in all cases whether or not acting with the Supplier's knowledge) breaches:

45.2.1 Clause 45.1;

45.2.2 the Bribery Act 2010, the Anti-Terrorism Crime and Security Act 2001 in relation to this Agreement or any other contract with STA or any Crown Body; or

45.2.3 Clause 45.5,

STA may terminate this Agreement by written notice with immediate effect pursuant to Clause 39.3.2.1 (Termination by STA – Default).

45.3 Any termination under Clause 45.2 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to STA.

45.4 Notwithstanding Clause 37 (Governing Law, Dispute Resolution and Arbitration), any dispute relating to:

45.4.1 the interpretation of Clauses 45.1 to 45.3 inclusive; or

45.4.2 the amount or value of any gift, consideration or commission,

shall be determined by STA and the decision shall be final and conclusive.

45.5 The Supplier shall and shall procure that persons associated with it or other persons who are performing services in connection with this Agreement shall:

45.5.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption ("**Relevant Requirements**"), including the Bribery Act 2010;

45.5.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

45.5.3 not do, or omit to do, any act that will cause or lead STA to be in breach of any of the Relevant Requirements and/or STA's policies;

45.5.4 have and shall maintain in place throughout the Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the relevant policies and will enforce them where appropriate; and

- 45.5.5 within 1 month of the Effective Date, and annually thereafter, certify to STA in writing signed by an officer of the Supplier compliance with this Clause 45 by the Supplier and all persons associated with it or other persons who are performing services or supplying goods in connection with this Agreement. The Supplier shall provide such supporting evidence of compliance as STA may reasonably request.
- 45.6 The Supplier shall indemnify STA against any losses, liabilities, damages, costs (including legal fees) and expenses incurred by, or awarded against, STA as a result of any breach of this Clause 45 by the Supplier or any breach of provisions equivalent to this Clause 45 in any subcontract by any Key Subcontractor.
46. **THIRD PARTY RIGHTS**
- 46.1 This Agreement does not create any right or benefit enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999) except for:
- 46.1.1 a person who under this Agreement is a permitted successor or assignee of the rights or benefits of a Party that may enforce such rights or benefits; and
- 46.1.2 any Successor Operator in respect of Clause 41 (Employees) only.
- 46.2 The Successor Operator(s) may only bring an action under this Agreement with the prior written consent of STA.
- 46.3 The Parties agree that no consent from the persons referred to in Clauses 46.1.1 and 46.1.2 is required for the Parties to vary or rescind this Agreement (whether or not in a way that varies or extinguishes rights or benefits in favour of such third parties).
47. **GENERAL**
- 47.1 Entire Agreement
- 47.1.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and (to the extent permissible by law) supersedes all prior representations or oral or written agreements between the Parties with respect to that subject matter, provided that neither Party is attempting to exclude any liability for fraudulent statements (including fraudulent pre- contractual misrepresentations on which the other Party can be shown to have relied).
- 47.1.2 Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it.
- 47.1.3 The Parties shall not have any right to terminate this Agreement other than in accordance with the provisions of Clause 39 (Termination).
- 47.2 Publicity and Public Announcements
- The Supplier must not make any public announcement or issue any circular relating to this Agreement without the prior written approval of STA.
- 47.3 Exclusion of Contra Proferentem Rule
- Each Party to this Agreement confirms it has had sufficient opportunity to obtain legal advice relating to all the matters provided for in this Agreement, including the provisions of Clause 35 (Limitations of Liability) and agrees, having considered the terms of each Clause and this Agreement as a whole, that the provisions of each Clause and this Agreement are fair and reasonable. The Parties agree that the contra proferentem rule of contract interpretation shall not apply to this Agreement.
- 47.4 Waiver

No failure of either Party to exercise, and no delay by it in exercising, any right, power or remedy in connection with this Agreement (each a "Right") shall operate as a waiver of that Right, nor shall any single or partial exercise of any Right preclude any other or further exercise of that Right or the exercise of any other Right. A waiver may be made only in writing and must be expressly stated to be a waiver of a Party's rights under this Agreement.

47.5 Amendment

An amendment of this Agreement will not be binding on the Parties unless set out in writing, expressed to amend this Agreement and signed by authorised representatives of each of the Parties.

47.6 Costs

Each Party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

47.7 Notices

47.7.1 Any notice or other communication in connection with this Agreement (each, a "Notice") shall be:

47.7.1.1 in writing; and

47.7.1.2 sent by electronic mail, registered post or courier.

47.7.2 Notices must be addressed in accordance with the details set out in Schedule 6 (Governance, Service Management and Performance Monitoring).

47.7.3 A Notice shall be effective upon receipt and shall be deemed to have been received:

47.7.3.1 where sent by electronic mail, at the date and time of transmission of the email provided that a hard copy of the same is delivered by registered post or courier and signed for upon delivery by the receiving Party within 3 Business Days of the date of the electronic mail; or

47.7.3.2 where sent by registered post or courier at the date and time of delivery, if signed for by the receiving Party upon delivery.

47.8 Invalidity

47.8.1 If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, the Parties shall seek to agree any deletions or modifications necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties.

47.8.2 To the extent that the Parties do not agree to delete or modify the provision, in whole or in part, under Clause 47.8.1, then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed to not form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall, subject to any deletion or modification made under Clause 47.8.1, not be affected.

47.9 Counterparts

This Agreement may be entered into in any number of counterparts all of which, when taken together, shall constitute one and the same instrument. Any Party may enter into this Agreement by executing any such counterpart.

47.10 Independent Contractor

This Agreement does not set up or create an employer/employee relationship, a partnership of any kind, an association or trust between the Parties, each Party being individually responsible only for

its obligations as set out in this Agreement and, in addition, the Parties agree that their relationship is one of independent contracting parties. Save to the extent to which a Party is specifically authorised in writing in advance by the other Party, neither Party is authorised or empowered to act as agent for the other for any purpose and neither Party must on behalf of the other enter into any contract, warranty or representation as to any matter. Save as provided in Clause 19 (Management of Third Party Contractors), neither Party shall be bound by the acts or conduct of the other, save for acts or conduct which the first Party specifically authorises in writing in advance.

47.11 Amendments

Subject to Clause 28 (Change), no amendment to this Agreement shall be effective save where in writing and signed by both Parties.

48. POTENTIAL SERVICES

- 48.1 As outlined in the Official Journal of the European Union Contract Notice 2015/S 204-370727 dated 21st of October 2015 as amended by the Official Journal of the European Union Corrigendum Notice 2016/S 131-236295 dated 9th July 2016 both of which advertised STA's intention to procure the Services, developments in Government policy affecting National Curriculum Assessments are anticipated as a matter of course during the Term. As at the Effective Date, such policy was still in formulation. These policy developments may affect existing and future National Curriculum Assessments which could result in the Services being amended and/or the scope of the same being increased. STA hereby reserves the right to amend and/or increase the scope of the Services in response to such Government policy developments and where such amendment and/or increase in the scope of the Services involves a Change, this shall be governed by the Change Control Procedure. Furthermore, even though as at the Effective Date there were no plans by the STA to conduct online assessments, STA nevertheless hereby reserves the right to trial or implement any such changes through this Agreement should they occur within the Term and where lawful to do so. Where STA seeks to exercise its rights reserved hereunder the Supplier agrees to cooperate fully with STA to effect the required changes to the Agreement in accordance with the terms of the Agreement and the Law.

In witness whereof this Agreement has been duly executed:

SIGNED for and on behalf of:	SIGNED for and on behalf of:
THE SECRETARY OF STATE FOR EDUCATION ACTING THROUGH THE STANDARDS & TESTING AGENCY	CAPITA BUSINESS SERVICES LIMITED
Name: <i>PAUL KETTI</i>	Name: <i>JONATHAN LEWIS</i>
Job Title: <i>DIRECTOR - GENERAL</i>	Job Title: <i>CEO</i>
Date: <i>11/7/2018</i>	Date: <i>11-7-18</i>
Witnessed by:	Witnessed by:
<i>Chris Walker</i>	<i>P.R. Knight</i>
Name: <i>A. M. WALKER.</i>	Name: <i>P.R. KNIGHT</i>
Date: <i>11.7.18</i>	Date: <i>11.7.18</i>
Address: <i>D.F.E.</i>	Address: <i>CAPITA HQ.</i>