15th April 2021

**THE SECR****ETARY** **OF STATE FOR EDUCATIO****N**

and

Mazars LLP

**Framework** **Agreement**

For Provider Market Oversight (PMO) Framework

**SECTION 1**

**FORM** **OF AGREEMENT**

**T****HI****S** **FRAMEWORK AGREE****MENT** is made on 15th April 2021

**BETWEEN**:

1. **THE SECRETARY OF STATE FO****R EDUCATION** of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT (“**DfE**"); and
2. Mazars LLP of registered in England and Wales under number OC308299 whose registered office is Tower Bridge House, St Katharines Way, London, E1W 1DD (the “**Contractor**”)

**WHEREAS:**

1. DfE placed a contract notice 2020/S 218-536579 on 9th November 2020 in the Official Journal of the European Union seeking expressions of interest from potential service Contractors for the provision of the Services to itself and other Contracting Bodies.
2. Following receipt of expressions of interest, DfE invited potential service Contractors to tender for the provision of services for restructuring services, forensic accounting and investigation support and audit and assurance services for use by DfE in relation to Education Providers in England and Wales.
3. On the basis of the Contractor’s tender, DfE selected the Contractor to enter into a framework agreement to provide the Services stated in the Framework Specification to DfE on placing Engagements in accordance with the Framework Agreement.
4. This Framework Agreement sets out the procedure for ordering the Services, the main terms and conditions for the provision of the Services and the obligations of the Contractor under this Framework Agreement.
5. There is no obligation for DfE to place Engagements with the Contractor under this Framework Agreement or at all.

**AGREED TERMS**

**TERMS OF THIS FRAMEWORK AGREEMENT**

1. DfE appoints the Contractor as a potential Contractor of the Services in accordance with the terms and conditions of this Framework Agreement which comprises all the documents set out below and incorporates all the standard terms and conditions set out in [Section 2](#Section2) and the Schedules and Appendices below.
2. This Framework Agreement comprises the following documents:

[Section 1](#Section1) Parties, Recitals, Terms, Signatures

[Section 2](#Section2) Standard Terms and Conditions of Framework Agreement

Schedule 1 Definitions

Schedule 2 Framework Specification

Schedule 3 Contractor’s Tender

Schedule 4 Charging Matrix

Schedule 5 Call-Off Contract Award Procedure

Schedule 6 Call-Off Terms and Conditions

Schedule 7 Engagement Letter

Schedule 8 Business Continuity and Disaster Recovery

Schedule 9 Change Control Notice

Schedule 10 Non-disclosure Agreement

Schedule 11 Data Processing Schedule

Schedule 12 Commercially Sensitive Information

Schedule 13 Key Performance Indicators

1. Execution of the Framework Agreement is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Framework Agreement is formed on the date on which both Parties communicate acceptance of its terms on DfE’s electronic contract management system (“**Jaggaer**”).

This Framework Agreement has been entered into on the date stated at the beginning of it.

Signed by <redacted><redacted>

For and on behalf of DfE

<redacted>

Signed by <redacted><redacted>For and on behalf of the Contractor

<redacted>

# SECTION 2

# STANDARD TERMS AND CONDITIONS OF FRAMEWORK AGREEMENT

1. DEFINITIONS AND INTERPRETATION
   1. In this Framework Agreement, unless the context otherwise requires:
      1. capitalised expressions shall have the meanings set out in **Schedule 1** to this Framework Agreement or the relevant Framework Agreement schedule in which that capitalised expression appears;
      2. if a capitalised expression does not have an interpretation in **Schedule 1** to this Framework Agreement or the relevant Framework Agreement schedule, it shall have the meaning given to it in this Framework Agreement. If no meaning is given to it in this Framework Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning;
      3. words importing the singular meaning include, where the context so admits, the plural meaning and vice versa;
      4. words importing the masculine include the feminine and the neuter;
      5. reference to a clause is a reference to the whole of that clause unless stated otherwise;
      6. references to any statutory provision, enactment order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
      7. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
      8. any reference in the Framework Agreement to a clause or schedule is a reference to a clause or schedule of the Framework Agreement and references in any schedule to paragraphs relate to the paragraphs in that schedule;
      9. the clause headings are included for convenience only and shall not affect the interpretation of the Framework Agreement;
      10. the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
      11. any reference in this Framework Agreement or any Call-Off Contract which immediately before Exit Day (as the same is defined in the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
          1. any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“EU References”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
          2. any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.
   2. Where a standard, policy or document is referred to in this Framework Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard policy or document, the Contractor shall notify DfE and the Parties shall update this Framework Agreement with a reference to the replacement hyperlink.
   3. Subject to **clause 1.4**, in the event and to the extent only of a conflict between any of the provisions of this Framework Agreement, the conflict shall be resolved, in accordance with the following descending order for precedence:
      1. [**Section 1**](#Section1): Parties, Recitals, Terms, Signatures and [**Section 2**](#Section2): Standard Terms and Conditions of Framework Agreement and Framework Agreement **Schedule 1** Definitions;
      2. Framework Agreement **Schedule 2;** and
      3. Framework Agreement **Schedules 3-14** inclusive.
   4. If there is any conflict between the provisions of this Framework Agreement and provisions of any Call-Off Contract, the provisions of the Framework Agreement shall prevail over those of the Call-Off Contract save that:
      1. any special conditions or variations set out in the Engagement Letter (provided that such conditions or such variations do not amount to a material change of this Framework Agreement within the meaning of the Public Contracts Regulations) forming part of the Call-Off Contract shall prevail over the Framework Agreement and the Call-Off Terms and Conditions set out in **Schedule 6**.
2. DUE DILIGENCE
   1. The Contractor acknowledges that:
      1. DfE has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant to its performance under this Framework Agreement;
      2. it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
      3. it has raised all relevant due diligence questions with DfE before the Framework Commencement Date;
      4. it has undertaken all necessary due diligence and has entered into this Framework Agreement in reliance on its own due diligence alone; and
      5. it shall not be excused from the performance of any of its obligations under this Framework Agreement on the grounds of, nor shall the Contractor be entitled to recover any additional costs or charges arising as a result of, any:
         1. misinterpretation of the requirements of DfE in this Framework Agreement, and the Framework Specification;
         2. failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
         3. failure by the Contractor to undertake its own due diligence.
3. TERM OF FRAMEWORK AGREEMENT
   1. This Framework Agreement commences on the Framework Commencement Date and shall subject to **clause 3.2** expire on the Framework Expiry Date, unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law.
   2. DfE may extend the term of the Framework Agreement on one or more occasions by periods (each an “Extension”) determined by DfE which shall together not exceed a total period of 24 months. The terms of the Framework Agreement will apply throughout the period of any Extension.
4. SCOPE OF THE FRAMEWORK AGREEMENT
   1. This Framework Agreement governs the relationship between DfE and the Contractor in respect of the provision of the Services by the Contractor to DfE.
   2. DfE (subject to the following provisions) may at its absolute discretion and from time to time order Services from the Contractor in accordance with the Call-Off Contract award procedure specified **Schedule 5 (****Call-Off Contract Award Procedure)**.
   3. The Contractor acknowledges that there is no obligation for DfE to purchase any Services from the Contractor during the term of the Framework Agreement.
   4. If and to the extent that any Services under this Framework Agreement are required DfE may

enter into a contract with the Contractor for these Services materially in accordance with the terms of the Call-Off Contract provided that it complies with the ordering procedure in **Schedule 5 (****Call-Off Contract Award Procedure)**.

* 1. Contracting Bodies
     1. Any Contracting Body may at their absolute discretion (but is under no obligation whatsoever to) during the Framework Term order Services from the Contractor in accordance **clause 4.4** above. The Parties acknowledge and agree that the Contracting Bodies have the right to order Services pursuant to this Framework Agreement provided that they comply at all times with the Regulations and the ordering procedure in **Schedule 5 (****Call-Off Contract Award Procedure)** and any reference to DfE shall be deemed to be a reference to the Contracting Body. If there is a conflict between **Sch****edule 5 (Call-Off Contract Award Procedure)** and the Public Contract Regulations, the Public Contract Regulations shall take precedence.
     2. Where a Contracting Body awards a Call-Off Contract under this Framework Agreement the Contracting Body shall be entitled to enforce the rights of DfE under this Framework Agreement as if they were its own for the purposes of receiving the Services and obligations under its Call-Off Contract, and **clause 40** of this Framework Agreement shall be construed accordingly

1. CONTRACTOR’S APPOINTMENT
   1. DfE appoints the Contractor as a potential Contractor of the Services and the Contractor shall be eligible to be considered for the award of orders for such Services, during the term of the Framework Agreement.
2. NON-EXCLUSIVITY
   1. The Contractor acknowledges that, in entering into this Framework Agreement, no form of exclusivity or volume guarantee has been granted by DfE for the Services and that DfE is at all times entitled to enter into other contracts and arrangements with other Contractors and any other third parties for the provision of any or all services which are the same as or similar to the Services.
3. conflicts OF INTEREST
   1. The Contractor shall:
      1. not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under this Framework Agreement or any Call-Off Contract to the required standards;
      2. take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of DfE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to DfE or any Reliance Party under the provisions of this Framework Agreement or any Call-Off Contract;

in each case, a “**Conflict of Interest**”; and

* + 1. conduct its business, operations and activities in a politically neutral fashion,
  1. The Contractor warrants and represents to DfE that it has performed appropriate conflict checks in accordance with Good Industry Practice prior to the Framework Commencement Date and that at the Framework Commencement Date there are no Conflicts of Interest that would prohibit or otherwise impair the objectivity of the Contractor in its performance of its obligations under this Framework Agreement.
  2. The Contractor shall in advance of each and every Engagement and in any case within 72 hours (or where DfE reasonably considers an Engagement to be of an urgent nature within 24 hours) of request by DfE, or requirement under the Call-Off Contract Award Procedure (as set out in **Schedule 5 (Call-Off Contract Award Procedure)**) perform appropriate conflict checks in accordance with Good Industry Practice and notify DfE of the results of such conflict checks.
  3. The Contractor shall actively monitor and manage conflicts in accordance with Good Industry Practice. In the event that during the term of this Framework Agreement, or during the term of any Call-Off Contract, a Conflict of Interest or potential Conflict of Interest arises in connection with the Services, the Contractor shall:
     1. immediately notify DfE of the Conflict of Interest or potential Conflict of Interest;
     2. take all reasonable steps to manage the Conflict of Interest or potential Conflict of Interest in accordance with **clause 7.1**;
     3. follow DfE’s reasonable instructions in relation to such Conflict of Interest or potential Conflict of Interest; and
     4. subject to **clause 9.1.2** of this Framework Agreement (Reliance and Disclosure), if DfE is not satisfied with the Contractor’s actions in accordance with **clause 7.4.2**, on request by DfE promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).
  4. Subject to **clause 9.1.2** of this Framework Agreement (Reliance and Disclosure), the Contractor shall indemnify DfE in relation to any loss arising from the termination of the Framework Agreement or any Call-Off Contract in accordance with **clause** **27.1.4** of this Framework Agreement (Termination on Default) or in accordance with **clause 22.3.5** of the Call-Off Terms and Conditions (Termination). This shall include, but shall not be limited to, indemnification in relation to management costs and costs associated with obtaining the Services from a Replacement Contractor.

1. WARRANTIES AND REPRESENTATIONS
   1. DfE and the Contractor warrant and represent to each other that:
      1. each party has full capacity and authority to enter into and perform its obligations under this Framework Agreement;
      2. this Framework Agreement is executed by a duly authorised representative of each party; and
      3. each party has not committed and will not commit any Fraud by entering into this Framework Agreement.
   2. The Contractor warrants and represents to DfE that:
      1. all information, statements and representations contained in its response to the Invitation to Tender are and all responses made to DfE as part of the Call-Off Contract Award Procedure set out in **Schedule 5** to this Framework Agreement will be true and accurate and not misleading and that information, statements and representations made in tendering for work under the call-off process will be true and accurate;
      2. no claim is being asserted and no litigation or similar action or potential litigation is being taken against it that might affect its ability to provide its obligations under this Framework Agreement or any Call-Off Contract;
      3. it is not subject to any contractual obligation that is likely to have a detrimental effect on its ability to perform its obligations under this Framework Agreement or any Call-Off Contract;
      4. it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to DfE before the Framework Commencement Date;
      5. it has not been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
      6. it is not aware of any financial or other advantage being given to any person working for or engaged by DfE, or that an agreement has been reached to that effect, in connection with the execution of the Framework Agreement or any Call-Off Contract, excluding any arrangement of which full details have been disclosed in writing to DfE before execution of the Framework Agreement or Call-Off Contract;
      7. it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor’s obligations, all licences, authorisations, permits and necessary consents under the Framework Agreement;
      8. neither the Contractor nor any of its Personnel or other persons associated with it:
         1. has been convicted of any offence involving slavery and human trafficking; and
         2. to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or Regulatory Body regarding any offence or alleged offence of or in connection with slavery and human trafficking;
      9. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor’s assets or revenue;
      10. it shall perform the Services in accordance with and comply at all times with any statutory duty it owes to DfE, the Education Provider or any other persons in connection with the Services; and
      11. it shall not introduce any Malicious Software to or otherwise cause damage to the DfE System.
   3. Each of the representations and warranties set out in **clauses 7.2, 8.1 and 8.2** shall be construed as a separate warranty and representation and shall not be limited or restricted by reference to or inference from the terms of any other representation, warranty or any other undertaking in this Framework Agreement or any Call-Off Contract.
   4. If at any time the Contractor becomes aware that a representation or warranty given by it under **clauses 7.2, 8.1 and 8.2** has been breached, is untrue or is misleading, it shall immediately notify DfE of the relevant occurrence in sufficient detail to enable DfE to make an accurate assessment of the situation.
   5. For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination DfE may have in respect of the breach of that provision by the Contractor which constitutes a Default of this Framework Agreement.
2. RELIANCE AND DISCLOSURE
   1. DfE may request that additional persons are added as a Reliance Party in an Engagement Letter or subsequently by agreement between the Parties. The Contractor shall:
      1. not unreasonably withhold its consent where DfE requests prior to entry into any Engagement for any other persons to be added as an additional Reliance Party; and
      2. not unreasonably withhold its consent where DfE requests following entry into any Engagement for other persons to be added as an additional Reliance Party (unless those persons were identified as potential stakeholders as part of the Call Off Contract Award Process), (provided that the parties agree and acknowledge that where there is a Conflict of Interest with such proposed additional Reliance Party the parties shall work in good faith to agree the terms on which such Conflict of Interest will be managed. If, following such good faith discussions, the Parties are unable to agree terms on which the Conflict of Interest will be managed, the Contractor’s withholding of consent shall not be considered unreasonable and **clauses 7.4.4 and 7.5** of this Framework Agreement (Conflicts of Interest) shall not apply in respect of that Conflict of Interest).
   2. The Contractor acknowledges and agrees that it owes a duty of care in its performance of the Services under any Engagement to DfE and any Reliance Party.
   3. Where DfE considers it necessary or desirable for a Reliance Party to have access to and rely on the Deliverables to the same or similar extent as DfE, the Contractor:
      1. shall disclose the Deliverables to the relevant Reliance Party on the condition that the Contractor and the relevant Reliance Party shall enter into a Reliance Letter on reasonable terms (which shall be agreed in advance with the DfE) and the Reliance Letter shall reflect the following principles:
         1. the Reliance Letter shall set out the terms on which the Contractor shall provide a duty of care to the Reliance Party;
         2. the Reliance Letter shall include a warranty that the Contractor has conducted necessary conflict checks and no Conflict of Interest applies in relation to the Reliance Party’s reliance on the Deliverable;
         3. the Reliance Letter shall specify that DfE has no liability or responsibility whatsoever to the Reliance Party in relation to the Reliance Party’s use or reliance on the Deliverables.
   4. Save where otherwise agreed in writing between the parties, nothing in any Reliance Letter shall operate to amend any of the rights or remedies available to DfE under the terms of this Framework Agreement or any Call-Off Contract.
   5. Where DfE or the Contractor considers it necessary or desirable for a person or entity that is not a Reliance Party to receive access to the Deliverables, the Parties may agree that such person or entity can receive access on a non-reliance basis only, on the condition that the Contractor and the person or entity receiving access enter into a Hold Harmless Letter in a format provided to the third party by the Contractor, which shall include a provision that excludes any liability or responsibility of DfE to the third party in relation to any loss, damage, cost or expenses caused by its use or reliance on the Deliverables. For the avoidance of doubt, if a party that is not DfE or a Reliance Party chooses to rely on the Deliverables they do so at their own risk.
   6. Without prejudice to this **clause 9 (Reliance and Disclosure)**, DfE acknowledges and agrees that:
      1. the Deliverables, and any other opinions provided by the Contractor in connection with the Framework Agreement or Call-Off Contract should not be used for any purpose other than that for which they were prepared (or as otherwise set out in an Engagement Letter, or Reliance Letter) and shall not be reproduced or made available to any third party other than in accordance with this clause 9 (Reliance and Disclosure) or otherwise without the written consent of the Contractor; and
      2. DfE does not intend to rely on any advice or Deliverable which the Contractor provides to DfE on a draft basis.
   7. NOT USED
3. PERFORMANCE
   1. The Contractor shall perform all Call-Off Contracts entered into with DfE in accordance with the requirements of this Framework Agreement, the Call-Off Contract and the Engagement Letter including but not limited to the Framework Specification, Call-Off Contract Specification, and any protocols, policies or other documents referred to therein, the Contractor’s Tender set out in **Schedule 3 (Contractor’s Tender)** and the Business Continuity and Disaster Recovery Plan set out in **Schedule 8 (Business Continuity and Disaster Recovery).**
   2. The Contractor shall perform the Services under this Framework Agreement and each Call-Off Contract in such a manner so as to meet or exceed the Key Performance Indicators and shall comply with **Schedule 13 (****Key Performance Indicators)** in relation to the monitoring and reporting on its performance against Key Performance Indicators.
   3. The Contractor shall perform the Services in accordance with the Service Levels and shall report on its compliance with the Service Levels in accordance with **clause 24.1.3 (Reporting and Meetings)**.
   4. The Contractor shall provide all equipment, consumables, plant, materials and other such items and resources necessary for the supply of the Services, unless otherwise agreed by DfE under the Call-Off Contract.
   5. The Contractor shall:
      1. obtain and maintain all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable the provision of any of the Services;
      2. provide DfE with such assistance as DfE may reasonably require during the Framework Term in connection with the management and administration of this Framework Agreement;
      3. promptly notify DfE in the event that it undergoes a Change of Control; and
      4. at all times act in an appropriate manner in accordance with the ethical guidelines of any applicable Regulatory Bodies.
   6. Where this Framework Agreement places an obligation on the Contractor to do, or refrain from doing, any act or thing, this will also mean that the Contractor shall procure that all Sub-Contractors and Personnel also do, or refrain from doing, such act or thing.
   7. The Parties shall in performing its obligations under the Framework Agreement comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation.
   8. The Contractor shall provide such quality assurance activities as are required by the Framework Specification.
4. PREVENTION OF FRAUD AND BRIBERY
   1. The Contractor shall not:
      1. commit a Prohibited Act; and/or
      2. do or suffer anything to be done which would cause DfE or any of its respective employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
   2. The Contractor shall, during the Framework Term (or if longer the term of any Call-Off Contract):
      1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
      2. keep appropriate records of its compliance with its obligations under clause 11.1.1 and make such records available to DfE on request.
   3. The Contractor shall immediately notify DfE in writing if it becomes aware of a breach of this clause 11 (Prevention of Fraud and Bribery) or has reason to believe that it has or any of the Personnel have:
      1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
      3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of Services or otherwise suspects that any person directly or indirectly connected with the performance of Services has committed or attempted to commit a Prohibited Act.
   4. The Contractor shall respond promptly to DfE’s enquiries, co-operate with any investigation, and allow DfE to audit any books, records and/or any other relevant documentation in connection with any breach, or suspected breach of this clause 11 (Prevention of Fraud and Bribery).
   5. If the Contractor is in Default under clause 11.1, DfE may by notice:
      1. require the Contractor to remove from performance of Services any Personnel whose acts or omissions have caused the Default; or
      2. immediately terminate this Framework Agreement and/or any Call-Off Contract.
   6. Any notice served by DfE under clause 11.5 shall specify the nature of the Prohibited Act, the identity of the party who DfE believes has committed the Prohibited Act and the action that DfE has taken (including, where relevant, the date on which the Framework Agreement and/or any Call-Off Contract shall terminate).
   7. Any termination under this **clause 11 (****Prevention of Fraud and Bribery)** will be without prejudice to any right or remedy which has already accrued or subsequently accrues to DfE.
5. DISCRIMINATION
   1. The Contractor shall provide the Services and perform its obligations under this Framework Agreement and any Call-Off Contract in accordance with:
      1. all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
      2. DfE’s equality and diversity policy as given to the Contractor from time to time; and
      3. any other requirements and instructions which DfE reasonably imposes in connection with any equality obligations imposed on DfE at any time under applicable equality Law.
   2. The Contractor shall take all necessary steps to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation). The Contractor shall inform DfE on request of the steps taken to comply with this clause.
6. Personnel
   1. The Contractor shall:
      1. ensure that all Personnel:
         1. are appropriately qualified, trained and experienced and carry any necessary licenses, consents and authorisations required to perform its obligations under this Framework Agreement and to provide the Services under a Call-Off Contract with reasonable skill, care and diligence (and in each case meeting any working requirements set out in the Framework Specification);
         2. are vetted in accordance with Good Industry Practice and any requirements set out in the Framework Specification or any other policy of DfE in place from time to time.
         3. when attending the Premises, comply with all instructions of DfE’s Representative;
         4. in respect of the provision of Services, are lawfully entitled to work in the United Kingdom.
      2. retain overall Control of the Personnel at all times so that the Personnel shall not be deemed to be employees, agents, workers or contractors of DfE;
      3. comply with all applicable Laws relating to its Personnel, in particular, the Modern Slavery Act 2015, the Gangmasters (Licensing) Act 2004 and the Working Time Regulations 1998 (SI 1998/1833) (as amended); and
      4. be liable at all times for all acts and omissions of Personnel, so that any act or omission of Personnel which results in a Default under this Framework Agreement or any Call-Off Contract shall be a Default by the Contractor.
   2. This Framework Agreement and all Call-Off Contracts entered into pursuant to its terms shall constitute a contract for the provision of services and not a contract of employment and accordingly, the Contractor shall be fully responsible for and shall indemnify DfE for and in respect of any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Contractor or any of its Personnel against DfE arising out of or in connection with the provision of the Services, including any claims or actions brought under the Agency Workers Regulations 2010 (SI 2010/93).
   3. Where the Contractor or any Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Framework Agreement or any Call-Off Contract, the Contractor shall:
      1. at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statues and regulations relating to national insurance contributions in respect of that consideration; and
      2. indemnify DfE against any income tax, national insurance and social security contributions and any other liability deduction, contribution assessment or claim arising from or made in connection with the provision of the Services by the Contractor and any Personnel.
   4. If DfE reasonably believes that any of the Personnel are unsuitable to undertake work in respect of this Framework Agreement or any Call-Off Contract (including where Personnel have failed to comply with instructions on the Premises as required under **clause 13.1.1.1**), it may direct the Contractor to end the involvement of the relevant Personnel in any work connected to this Framework Agreement or any Call-Off Contract and/or assign an appropriate member of Personnel to supervise such work or take over the role of the member of Personnel so deemed as unsuitable (at the Contractor’s expense).
   5. The Contractor shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
   6. In addition to the record keeping requirements in **clause 23 (Record Keeping and Audit)** of the Framework Agreement and any specific record-keeping obligations under a Call-Off Contract, the Contractor shall:
      1. maintain a complete set of records to trace the supply chain of all Services provided to DfE in connection with this Framework Agreement and any Call-Off Contract; and
      2. implement annual supplier and subcontractor audits, either directly or through a third party auditor to monitor compliance with the anti-slavery Laws.
   7. The Contractor shall notify DfE as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Framework Agreement or any Call-Off Contract.
7. CHARGES FOR SERVICES
   1. The Charges for any Services under a Call-Off Contract shall be set out in the Engagement Letter and shall be based on the prices set out in **Schedule 4 (****Charging Matrix)**.
   2. Subject to **clause 14.3**, the Charges set out in **Schedule 4 (****Charging Matrix)**, shall be fixed for the Framework Term.
   3. If, during the Framework Term, the Contractor is awarded Call-Off Contracts up to an aggregate value identified in **Schedule 4 (Charging Matrix)**, a volume discount, as set out in **Schedule 4 (****Charging Matrix)**, shall apply to the Charges in the Charging Matrix for the remainder of the Framework Term.
8. TAX COMPLIANCE
   1. If, during the term of this Framework Agreement or any Call-Off Contract, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
      1. notify DfE in writing of such fact within five (5) Business Days of its occurrence; and
      2. promptly provide to DfE:
         1. details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
         2. such other information in relation to the Occasion of Tax Non-Compliance as DfE may reasonably require.
9. OFFICIAL SECRETS ACT 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989
   1. The Contractor shall comply with, and shall ensure that its Personnel comply with, the provisions of:
      1. the Official Secrets Acts 1911 to 1989; and
      2. Section 182 of the Finance Act 1989.
   2. In the event that the Contractor or its Personnel fail to comply with this **clause 16 (Official Secrets Act 1911 to 1989, Section 182 of the Finance Act 1989)**, DfE reserves the right to terminate or suspend the Framework Agreement or any Call-Off Contract by giving notice in writing to the Contractor.
   3. A suspension notice given to a Contractor pursuant to **clause 16.2** must specify the period of suspension.
10. CONFIDENTIAL INFORMATION
    1. Except to the extent set out in this clause, the Contractor shall treat all Confidential Information supplied by, concerning, belonging or relating to DfE as confidential and in accordance with the HMG Security Policy Framework and shall not disclose any such Confidential Information to any other person without the prior written consent of DfE, except to such persons and to such extent as may be necessary for the performance of the Contractor’s obligations under the Framework Agreement or any Call-Off Contract.
    2. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Framework Agreement or any Call-Off Contract, DfE shall treat all Confidential Information of the Contractor as confidential and shall not disclose any such Confidential Information to the Contractor to any other person without the prior written consent of the Contractor, except to such persons and to such extent as may be necessary for the performance of DfE’s obligations under the Framework Agreement or any Call-Off Contract.
    3. Where required by DfE, the Contractor shall ensure that Sub-Contractors, professional advisors and consultants sign a non-disclosure agreement in substantially the form attached in **Schedule 10 (Non-Disclosure Agreement)** of the Framework Agreement prior to commencing any work in connection with the Framework Agreement. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this **clause 17.3**. Where requested by DfE, the Contractor shall provide DfE with a copy of the list and, subsequently upon request by DfE, copies of such of the listed non-disclosure agreements as required by DfE. The Contractor shall ensure that its Personnel, Sub-Contractors, professional advisors and consultants are aware of the Contractor’s confidentiality obligations under the Framework Agreement or any Call-Off Contract.
    4. The Contractor may only disclose DfE's Confidential Information to the Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Personnel are aware of and shall comply with these obligations as to confidentiality, including but not limited to the HMG Security Policy Framework.
    5. The Contractor shall not, and shall procure that the Personnel do not, use any of DfE's Confidential Information received otherwise than for the purposes of the Framework Agreement or any Call-Off Contract.
    6. **Clauses 17.1 and 17.2** shall not apply to the extent that:
       1. such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
       2. the Contractor is required to make such disclosure to a Regulatory Body within the context of an inspection;
       3. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
       4. such information was obtained from a third party without obligation of confidentiality;
       5. such information was already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement or any Call-Off Contract; or
       6. it is independently developed without access to the other party's Confidential Information.
    7. Nothing in **clauses 17.1 and 17.2** shall prevent DfE disclosing any Confidential Information obtained from the Contractor:
       1. for the purpose of the examination and certification of the Contractor’s accounts; or
       2. for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contractor has used its resources; or
       3. to any government department, Crown Body and the Contractor hereby acknowledges that all government departments, Crown Body or contracting authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments, Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, Crown Body; or
       4. to any Reliance Party to the extent that any such Confidential Information is included in any Deliverables accessed by the Reliance Party and subject to the terms of any Reliance Letter; or
       5. to any consultant, Contractor or other person engaged by DfE, provided that in disclosing information under **sub-clauses 17.7.3 and 17.7.5** DfE discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate
    8. Nothing in **clauses 17.1 to 17.2** shall prevent DfE or the Contractor from using any techniques, ideas or Know-How gained during the performance of its obligations under the Framework Agreement or any Call-Off Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other party’s Confidential Information or an infringement of the other party’s Intellectual Property Rights.
    9. DfE shall use all reasonable endeavours to ensure that any government department, Crown Body, employee, third party or Sub-Contractor to whom the Contractor’s Confidential Information is disclosed pursuant to this **clause 17 (****Confidential Information)** is made aware of DfE's obligations of confidentiality.
    10. DfE reserves the right to terminate or suspend the Framework Agreement in the event that the Contractor or its Personnel fail to comply with this **clause 17 (****Confidential Information).** A suspension notice given to a Contractor pursuant to this clause must specify the period of suspension.
    11. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services under the Call-Off Contract, the Contractor undertakes to maintain adequate and proportionate security arrangements that meet the requirements of professional standards and best practice and requirements of the HMG Security Policy Framework.
    12. The Contractor will immediately notify DfE of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services under a Call-Off Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor’s obligations under **clauses 17.1 to 17.5.** The Contractor will co-operate with DfE in any investigation that DfE considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
    13. The Contractor shall, at its own expense, alter any security systems at any time for the duration of the Framework Agreement or if longer any Call-Off Contract at DfE’s request if DfE reasonably believes the Contractor has failed to comply with **clause 17.11.**
    14. Subject to **clause 32.2** of this Framework Agreement (Recovery upon Termination), all Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to DfE and notified to DfE, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
    15. In the event that the Contractor fails to comply with any of the provisions in **clause 17** **(Confidential Information)**, the Contractor agrees that monetary damages would not be a sufficient remedy for breach and that DfE shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of the obligations in **clause 17 (****Confidential Information).**
    16. The Contractor hereby gives its consent for DfE to publish the whole of this Framework Agreement or any Call-Off Contract (subject to the application of any redactions which DfE considers appropriate applying the principles for withholding disclosure set out in **clause 18.3** and removing Commercially Sensitive Information) including from time to time agreed changes to the Framework Agreement or any Call-Off Contract, to the general public. Provided that DfE shall prior to publication consult with the Contractor on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
11. FREEDOM OF INFORMATION
    1. The Contractor acknowledges that DfE is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with DfE to enable DfE to comply with its Information disclosure obligations.
    2. The Contractor shall and shall procure that any Sub-Contractor shall transfer to DfE all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information:
       1. provide DfE with a copy of all Information in its possession or power in the form that DfE requires within five (5) Business Days (or such other period as DfE may specify) of DfE's request; and
       2. provide all necessary assistance as reasonably requested by DfE to enable DfE to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA and/or regulation 5 of the Environmental Information Regulations.
    3. DfE shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.
    4. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by DfE.
    5. The Contractor acknowledges that (notwithstanding the provisions of **clause 17 (Confidential Information)** DfE may be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:
       1. without consulting the Contractor; or
       2. following consultation with the Contractor and having taken its views into account;

provided always that DfE shall, in accordance with any recommendations of the codes of practice under the FOIA or the Environmental Information Regulations, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

* 1. The Contractor shall ensure that all Information is retained for disclosure and shall permit DfE to inspect such records as requested from time to time.
  2. The Contractor acknowledges that identifying Information as being Commercially Sensitive Information is of indicative value only and that DfE may be obliged to disclose it in accordance with this **clause 18 (Freedom of Information).**
  3. DfE shall not be liable for any loss, damage, harm or other detriment suffered by the Contractor arising from the disclosure of any Information falling within the scope of the FOIA and/or the Environmental Information Regulations (including Commercially Sensitive Information).

1. DATA PROTECTION
   1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the factual activity carried out by each of them in relation to their respective obligations under this Framework Agreement dictates the classification of each Party and shall be stated in **Schedule 12 (****Processing, personal data and data subjects).** In certain circumstances, a Party may act as “Joint Controller” or a “Controller” or a “Processor”.

**Where the Parties are Joint Controllers of Personal Data**

* 1. In the event that the Parties are Joint Controllers in respect of the Personal Data processed in connection with its obligations under this Framework Agreement, the Parties shall implement clauses that are necessary to comply with GDPR Article 26 based on the terms set out in **Schedule 11 (Processing, personal data and data subjects).**

**Where the Parties are Independent Controllers of Personal Data**

* 1. With respect to Personal Data which a Party acts as Controller but which is not under Joint Control (because the Parties determine the means and purposes of processing Personal Data independently of each other) each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
  2. Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
  3. Where a Party has provided Personal Data to the other Party in accordance with **clause 17.3 (Confidential Information)**, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
  4. The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Framework Agreement.
  5. The Parties shall only provide Personal Data to each other:
     1. to the extent necessary to perform the respective obligations under this Framework Agreement;
     2. in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
     3. where it has recorded it in **Schedule 11 (Processing, personal data and data subjects)**.
  6. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
  7. A Party processing Personal Data for the purposes of this Framework Agreement shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
  8. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Framework Agreement (“**the Request Recipient**”):
     1. the other Party shall provide any information and/or assistance as reasonable required by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
     2. where the request or correspondence is directed to the other party and/or relates to the other party's processing of the Personal Data, the Request Recipient will:
     3. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
     4. provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
  9. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to this Framework Agreement and shall:
     1. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
     2. implement any measures necessary to restore the security of any compromised Personal Data;
     3. work with the other Party to make any required notifications to the Information Commissioner’s Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
     4. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
  10. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Framework Agreement as specified in **Schedule 11** **(Processing, personal data and data subjects)**.
  11. Personal Data shall not be retained or processed for longer than is necessary to perform each Party’s obligations under this Framework Agreement which is specified in **Schedule 11 (Processing, personal data and data subjects)**.

**Where DfE is Controller and the Contractor is its Processor**

* 1. Where the Parties determine that DfE is the Controller and the Contractor is the Processor for the relevant Call-Off Contract, **clauses 19.14 to 19.26** (inclusive) shall apply. Where the Contractor is acting as a Processor, the only processing that it is authorised to do will be as set out in **Schedule 11** **(****Processing, personal data and data subjects)**. The Contractor shall notify DfE immediately if it considers that any of DfE’s instructions infringe the Data Protection Legislation.
  2. The Contractor shall provide all reasonable assistance to DfE in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of DfE, include:
     1. a systematic description of the envisaged processing operations and the purpose of the processing;
     2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
     3. an assessment of the risks to the rights and freedoms of Data Subjects; and
     4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
  3. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement:
     1. process that Personal Data only in accordance with **Schedule 11 (****Processing, personal data and data subjects)** unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify DfE before processing the Personal Data unless prohibited by Law;
     2. ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which DfE may reasonably reject (but failure to reject shall not amount to approval by DfE of the adequacy of the Protective Measures), having taken account of the:
        1. nature of the data to be protected;
        2. harm that might result from a Data Loss Event;
        3. state of technological development; and
        4. cost of implementing any measures;
     3. ensure that:
        1. the Personnel do not process Personal Data except in accordance with this Framework Agreement (and in particular **Schedule 11 (****Processing, personal data and data subjects**));
        2. it takes all reasonable steps to ensure the reliability and integrity of any Personnel who have access to the Personal Data and ensure that they:
           1. are aware of and comply with the Contractor’s duties under this clause;
           2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
           3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by DfE or as otherwise permitted by this Framework Agreement; and
           4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
     4. not transfer Personal Data outside of the European Union unless the prior written consent of DfE has been obtained and the following conditions are fulfilled:
        1. DfE or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or DPA 2018 Section 75) as determined by DfE;
        2. the Data Subject has enforceable rights and effective legal remedies;
        3. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist DfE in meeting its obligations); and
        4. the Contractor complies with any reasonable instructions notified to it in advance by DfE with respect to the processing of the Personal Data;
     5. at the written direction of DfE, delete or return Personal Data (and any copies of it) to DfE on termination of the Framework Agreement unless the Contractor is required by Law to retain the Personal Data.
  4. Subject to **clause 19.18** the Contractor shall notify DfE immediately if, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement, it:
     1. receives a Data Subject Request (or purported Data Subject Request);
     2. receives a request to rectify, block or erase any Personal Data;
     3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
     4. receives any communication from the Information Commissioner or any other regulatory authority;
     5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
     6. becomes aware of a Data Loss Event.
  5. The Contractor’s obligation to notify under **clause 19.17** shall include the provision of further information to DfE in phases, as details become available.
  6. Taking into account the nature of the processing, the Contractor shall provide DfE with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Framework Agreement and any complaint, communication or request made under **clause 17.8** (and insofar as possible within the timescales reasonably required by DfE) including by promptly providing:
     1. DfE with full details and copies of the complaint, communication or request;
     2. such assistance as is reasonably requested by DfE to enable DfE to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
     3. DfE, at its request, with any Personal Data it holds in relation to a Data Subject;
     4. assistance as requested by DfE following any Data Loss Event;
     5. assistance as requested by DfE with respect to any request from the Information Commissioner’s Office, or any consultation by DfE with the Information Commissioner's Office.
  7. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this **clause 19 (****Data Protection)**. This requirement does not apply where the Contractor employs fewer than 250 Personnel, unless:
     1. DfE determines that the processing is not occasional;
     2. DfE determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
     3. DfE determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
  8. The Contractor shall allow for audits of its Personal Data processing activity by DfE or DfE’s designated auditor.
  9. Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
  10. Before allowing any Sub-processor to process any Personal Data related to this Framework Agreement, the Contractor must:
      1. notify DfE in writing of the intended Sub-processor and processing;
      2. obtain the written consent of DfE;
      3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this **clause 19 (****Data Protection)** such that they apply to the Sub-processor; and
      4. provide DfE with such information regarding the Sub-processor as DfE may reasonably require.
  11. The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.
  12. DfE may, at any time on not less than 30 Business Days’ notice, revise this **clause 19** **(Data Protection)** by supplementing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Framework Agreement).
  13. The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner’s Office. DfE may on not less than 30 Business Days’ notice to the Contractor amend this Framework Agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Officer.
  14. This **clause 19 (****Data Protection)** shall apply during the Framework Term and indefinitely after its expiry.

1. LIABILITY
   1. Neither Party excludes or limits its liability (if any) to the other:
      1. for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
      2. for personal injury or death resulting from the its negligence;
      3. under section 2(3) Consumer Protection Act 1987;
      4. for its own fraud; or
      5. for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.
   2. The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses **13.2 and 13.3 (****Personnel)**, **21.5 (Publicity, Media and Official Enquiries)**, **22.7 (****Intellectual Property Rights)** of this Framework Agreement.
   3. Subject to **clause 20.1**, neither Party shall have any liability to the other under or in connection with the Framework Agreement, whether in contract, tort (including negligence) or otherwise:
      1. for any losses of an indirect or consequential nature; or
      2. for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential).
   4. Subject to **clause 20.1,** the Contractor’s aggregate liability in respect of any breach of **clause 19 (****Data Protection)** or **Schedule 11 (Processing, Personal Data and Data Subjects)** or breach of the Data Protection Legislation that is caused by Default of the Contractor shall in no event exceed ten million pounds (£10,000,000.00) for each and every event.
   5. Subject to **clause 20.1**, the maximum liability of either Party to the other under the Framework Agreement (other than in relation to the Contractor’s liability surrounding its data protection obligations, which shall be limited in accordance with the cap set out in **clause 20.4**), whether in contract, tort (including negligence), is limited in each calendar year in aggregate to one million pounds (£1,000,000.00) or the aggregate value of the Contract Price payable under all Call-Off Contracts entered into by the Contractor in that year (whichever is greater).
   6. Save as expressly agreed between the parties in writing, the Parties agree that neither the Deliverables nor any Services provided under any Call-Off Contract are intended, either expressly or by implication to confer any benefit on any third party other than a Reliance Party and each party’s liability to any such third party is expressly disclaimed.
   7. Subject to **clause 20.4** and **20.5**, DfE may recover from the Contractor the following losses incurred by DfE to the extent they arise as a result of a Default by the Contractor:
      1. any additional operational and/or administrative costs and expenses incurred by DfE, including costs relating to time spent by or on behalf of DfE in dealing with the consequences of the Default;
      2. any wasted expenditure or charges;
      3. the additional costs of procuring a Replacement Contractor for the remainder of the Framework Agreement and Call-Off Contracts between DfE and the Contractor and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Framework Agreement and Call-Off Contracts;
      4. any compensation or interest paid to a third party by DfE; and
      5. any fine or penalty incurred by DfE and any costs incurred by DfE in defending any proceedings which result in such a fine or penalty,

unless such Default arises as a result of negligence or negligent statement or criminal or illegal acts or omissions in which case **clause 20.4** shall not apply.

* 1. Except as otherwise expressly provided by the Framework Agreement, all remedies available to either Party for breach of the Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

1. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES
   1. The Contractor shall not and shall procure that the Personnel shall not wilfully and in breach of any obligation under this Framework Agreement or any Call-Off Contract, do anything which may damage the reputation of DfE in any way or bring DfE into disrepute. In particular, the Contractor acknowledges the sensitivity of certain aspects of the Services and shall comply with DfE instructions regarding any restrictions on communications in connection with Services provided under this Framework Agreement or any Call-Off Contract.
   2. The Contractor shall not and shall procure that the Personnel shall not without the prior Approval of DfE, which Approval shall not be unreasonably withheld or delayed:
      1. publish or broadcast, including through interviews with the media, use of social media and other communications with third parties, any details of Services provided pursuant to this Framework Agreement or any Call-Off Contract;
      2. use DfE’s name or brand in any promotion or marketing, including on its own website, or announcement of Engagements, without the prior written consent of DfE; or
      3. make any press announcements or publicise this Framework Agreement, or any Call-Off Contract or their contents in any way without the prior written consent of DfE, which consent shall not be unreasonably withheld or delayed.
   3. The Contractor agrees and acknowledges that nothing in this Framework Agreement or any Call-Off Contract either expressly or by implication constitutes an endorsement of any products or services of the Contractor and the Contractor shall not (and shall procure that the Personnel do not) conduct itself in such a way as to imply or express any such approval or endorsement.
   4. The Contractor agrees that monetary damages would not be a sufficient remedy for breach of **clauses 21.1 to 21.3** and that DfE shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of such clauses.
   5. The Contractor shall at all times during the Framework Agreement and any Call-Off Contract on written demand indemnify DfE and keep DfE fully indemnified against all losses, incurred by, awarded against or agreed to be paid by the Contractor arising out of any claim or infringement or alleged infringement resulting from the Contractor’s unauthorised use of DfE’s logo.
2. INTELLECTUAL PROPERTY RIGHTS
   1. All Intellectual Property Rights in materials:
      1. furnished to or made available to the Contractor by or on behalf of DfE (the “**DfE IP Materials**”) shall remain the property of DfE (save for Copyright and Database Rights which shall remain the property of the Crown);
      2. furnished to or made available to the Contractor by or on behalf of any Education Provider (the “**EP IP Materials**”) shall remain the property of the Education Provider; and
      3. prepared by or for the Contractor on behalf of DfE in connection with the Framework Agreement, (the "**Framework Specific IP Materials**") shall vest in DfE (save for Copyright and Database Rights which shall vest in the Crown).
   2. Save as expressly granted elsewhere under this Framework Agreement, DfE shall not acquire any right, title or interest in the Contractor Background IPRs.
   3. The Contractor shall not, and shall ensure that Personnel shall not, use or disclose any DfE IP Materials without DfE’s approval save to the extent necessary for the performance by the Contractor of its obligations under the Framework Agreement.
   4. The Contractor hereby assigns to DfE or undertakes to procure the assignment to DfE of all Intellectual Property Rights which may subsist in the Framework Specific IP Materials (save for Copyright and Database Rights which it hereby assigns to the Crown or undertakes to procure the assignment of to the Crown). These assignments shall be given with full title guarantee, shall take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Framework Specific IP Materials and shall include, without limitation, an assignment to DfE (or the Crown as appropriate) of all rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Contractor shall execute all documents and do all other acts requested by DfE and necessary to execute and perfect these assignments and to otherwise evidence DfE’s or the Crown’s ownership of such rights.
   5. The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright produced by or in connection with the Framework Agreement or the performance of the Framework Agreement.
   6. The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used in connection with the Framework Agreement grants to DfE, (a Reliance Party and/or a Replacement Contractor at the request of DfE) a non-exclusive licence or, if itself a licensee of those rights, shall grant to DfE (a Reliance Party and/or a Replacement Contractor at the request of DfE) an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for DfE to sub-licence, transfer, novate or assign to a Replacement Contractor. The Contractor shall notify DfE of any third party Intellectual Property Rights to be used in connection with the Framework Agreement prior to their use in connection with the Framework Agreement or the creation or development of the Framework Specific IP Materials.
   7. The Contractor shall at all times, during and after the Framework Term, on written demand indemnify DfE and each other Indemnified Person, and keep DfE and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
   8. If an IPRs Claim is made, or the Contractor anticipates that an IPRs Claim might be made, the Contractor may, at its own expense and sole option, either:
      1. procure for DfE or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
      2. replace or modify the relevant item with non-infringing substitutes provided that:
         1. the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
         2. the replaced or modified item does not have an adverse effect on any other services;
         3. there is no additional cost to DfE or relevant Indemnified Person (as the case may be); and
         4. the terms and conditions of this Framework Agreement shall apply to the replaced or modified Services.
   9. If the Contractor elects to procure a licence in accordance with **clause 22.8.1** or to modify or replace an item pursuant to **clause 22.8.2**, but this has not avoided or resolved the IPRs Claim, then:
      1. DfE may terminate this Framework Agreement (if subsisting) and/or any Call-Off Contract with immediate effect by written notice to the Contractor; and
      2. without prejudice to the indemnity set out in **clause 22.7**, the Contractor shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.
   10. The Contractor grants to DfE and, if requested by DfE, to a Reliance Party and Replacement Contractor, a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Contractor Background IPRs and which DfE (or Reliance Party or a Replacement Contractor) reasonably requires in order to exercise its rights and take the benefit of the Framework Agreement including the Services provided and the use and further development of the IP Materials (in the case of a Reliance Party in accordance with the Reliance Letter).
   11. DfE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor Background IPR.
   12. If the Contractor is not able to grant to DfE (or a Reliance Party or Replacement Contractor) a licence to use any Contractor Background IPR for any reason, including due to any Intellectual Property Rights that a third party may have in such Contractor Background IPR, the Contractor shall use its reasonable endeavours to:
       1. procure that the third party owner of any Intellectual Property Rights that are or that may be used to perform the Framework Agreement grants to DfE (or a Reliance Party or Replacement Contractor) a licence on the terms set out in **clause 22.10**; or
       2. if the Contractor is itself a licensee of those rights and is able to do so under the terms of its licence, grant to DfE a sub-licence on the terms set out in **clause 22.10**.
   13. The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are or are to be DfE IP Materials any act or thing which:
       1. would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry; or
       2. would or might prejudice the right or title of DfE to any of DfE IP Materials.
   14. The Contractor shall not use DfE’s branding unless it obtains DfE’s prior consent.
   15. When using DfE Trade Marks the Contractor shall observe all reasonable directions given by DfE from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:
       1. adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any DfE Trade Mark, or unfairly competes with any DfE Trade Mark; or
       2. apply anywhere in the world to register any trade marks identical to or so nearly resembling any DfE Trade Mark as to be likely to deceive or cause confusion.
3. RECORD KEEPING AND AUDIT
   1. The Contractor shall keep and maintain for seven (7) years after the expiry of the Framework Agreement or if later any Call-Off Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement or a Call-Off Contract (as relevant) including the Services provided under it, any Sub-Contracts and the amounts paid by DfE.
   2. The Contractor shall:
      1. keep the records and accounts referred to in **clause 23.1** in accordance with Good Industry Practice and Law;
      2. afford any Auditor access to the records and accounts referred to in **clause 23.1** at the Contractor’s premises and/or provide records and accounts (including copies of the Contractor’s published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Framework Term and during the term of any Call-Off Contract and the period specified in **clause 23.1**, in order that the Auditor(s) may carry out an inspection to assess compliance by the Contractor and/or its Sub-Contractors of any of the Contractor’s obligations under this Framework Agreement or any Call-Off Contract including in order to;
         1. verify the accuracy of any amounts payable by DfE under this Framework Agreement or a Call-Off Contract (and proposed or actual variations to them in accordance with this Framework Agreement or a Call-Off Contract);
         2. verify the costs of the Contractor (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
         3. verify the Contractor’s and each Sub-Contractor’s compliance with the applicable Law;
         4. identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances DfE shall have no obligation to inform the Contractor of the purpose or objective of its investigations;
         5. identify or investigate any circumstances which may impact upon the financial stability of the Contractor, the Call-Off Guarantor (if any) and/or any Sub-Contractors or their ability to perform the Services;
         6. obtain such information as is necessary to fulfil DfE’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
         7. review any books of account and the internal contract management accounts kept by the Contractor in connection with this Framework Agreement or a Call-Off Contract;
         8. carry out DfE’s internal and statutory audits and to prepare, examine and/or certify DfE’s annual and interim reports and accounts;
         9. enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which DfE has used its resources;
         10. review any records relating to the Contractor’s performance of the provision of the Services and to verify that these reflect the Contractor’s own internal reports and records;
         11. verify the accuracy and completeness of any information delivered or required by this Framework Agreement or a Call-Off Contract;
         12. review the Contractor’s quality management systems (including any quality manuals and procedures);
         13. review the Contractor’s compliance with the Standards;
         14. inspect the DfE Assets, including the DfE’s IPRs, equipment and facilities, for the purposes of ensuring that the DfE Assets are secure and that any register of assets is up to date; and/or
         15. review the integrity, confidentiality and security of the DfE Data.
   3. DfE shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of DfE.
   4. DfE may not, and may not instruct an Auditor to, conduct more than one audit per year during the Framework Term, unless:
      1. DfE suspects the Contractor to be in breach of any of its obligations under this **clause 23**; or
      2. an audit is required by a Regulatory Body.
   5. Subject to the Contractor’s rights in respect of Confidential Information, the Contractor shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
      1. all reasonable information requested by DfE within the scope of the audit;
      2. reasonable access to sites controlled by the Contractor and to any Contractor Equipment used in the provision of the Services; and
      3. access to the Contractor’s Personnel.
   6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this **clause 23 (Record Keeping and Audit)**, unless the audit reveals a Default by the Contractor in which case the Contractor shall reimburse DfE for DfE’s reasonable costs incurred in relation to the audit.
4. REPORTING AND MEETINGS
   1. The Contractor shall prepare and submit the following reports to DfE in connection with its performance of its obligations under this Framework Agreement, and the delivery of the Services under any Call-Off Contract:
      1. a monthly report (the “**Monthly Performance Report**”) setting out which the Contractor shall provide to DfE by no later than the tenth day of each calendar month of the Framework Term:
      2. its performance against the Key Performance Indicators set out in **Schedule 13 (Key Performance Indicators)** to this Framework Agreement, and otherwise agreed between the parties in a Call-Off Contract and set out in an Engagement Letter;
      3. its performance against the Service Levels set out in an Engagement Letter;
      4. all work in progress costs and expenses as against the fixed Charges in any Engagement Letter;
      5. the results of any quality assurance undertaken in accordance with **clause 10.8** or the Framework Specification;
      6. full details of any complaints received from any Education Provider in connection with its delivery of the Services under a Call-Off Contract;
      7. any other management information as DfE may reasonably request; and
      8. an annual report at the end of each Contract Year setting out the total value and the number of Call-Off Contracts the Contractor is working on.
   2. DfE’s Representative and the Contractor’s Representative shall meet from time to time (and at least once per month) to discuss:
      1. the Monthly Performance Report;
      2. the Contractor’s delivery of any Rectification Plan in accordance with **clause 25.2**; and
      3. at the meeting on or around the anniversary of the Framework Commencement Date in each Contract Year, the management of this Framework Agreement and the annual report referred to in **clause 24.1.8.**
   3. DfE may make changes to the nature of the management information that the Contractor is required to supply in the Monthly Performance Report and shall give the Contractor at least one Month’s written notice of any changes.
5. service rectification and remedies
   1. Without prejudice to any other right or remedy of DfE howsoever arising and subject **to clause 20 (****Liability)**, if the Contractor commits any Default of this Framework Agreement or any Call-Off Contract, DfE may (whether or not any part of the Services have been delivered) do any of the following:
      1. at DfE’s option, give the Contractor the opportunity to remedy (at the Contractor’s own cost) the Default together with any damage resulting from such Default;
      2. where the Default is a Notifiable Default refer the matter to the Rectification Plan Process; or
      3. carry out at the Contractor’s cost any work necessary to make the provision of the Services comply with this Framework Agreement or the relevant Call-Off Contract.
   2. Without prejudice to any other right or remedy available to DfE, in the event that:
      1. there is or is likely to be three (3) or more failures to meet the Key Performance Indicators in any six (6) month period;
      2. the Monthly Performance Report identifies as part of quality assurance monitoring errors or other failings of Deliverables in more than 10% of the Deliverables in any month;
      3. any quality assurance visit conducted in accordance with the Call-Off Contract identifies errors or other failings of Deliverables in more than 10% of the Deliverables reviewed as part of the visit; or
      4. the Contractor commits a material default of this Framework Agreement or any Call-Off Contract (or a number of repeated defaults which taken together constitute a material default);

each a “**Notifiable Default**”, the supplier shall notify DfE within three (3) Business Days of being aware of the Notifiable Default detailing the anticipated or actual effect of the Notifiable Default.

* 1. Where the Contractor notifies DfE of a Notifiable Default, or where DfE notifies the Contractor of a Notifiable Default, the Contractor shall submit a draft Rectification Plan to DfE for it to review as soon as possible and in any event within 10 Business Days (or such other period that may be agreed between the Parties after the original notification).
  2. The draft Rectification Plan shall set out:
     1. full details of the Notifiable Default that has occurred including root cause analysis;
     2. the actual or anticipated effects of the Notifiable Default;
     3. the steps which the Contractor proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring including timescales for such steps and for the rectification of the Notifiable Default (where applicable); and
     4. any other information that DfE may reasonably request in relation to the Notifiable Default or proposed rectification.
  3. DfE may reject the draft Rectification Plan if it acting reasonably considers it to be inadequate and will notify the Contractor as soon as reasonably practicable of its acceptance or rejection of the draft Rectification Plan. Where DfE rejects the draft Rectification Plan, the Contractor shall submit a revised draft Rectification Plan to DfE as soon as possible and within five (5) Business Days of the rejection.
  4. If DfE accepts the Rectification Plan, the Contractor shall (at its own cost) start work on the actions set out in the Rectification Plan, in accordance with its terms, and to meet any deadlines set out in the Rectification Plan.

1. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL
   1. Termination on insolvency
      1. DfE may terminate this Framework Agreement by written notice to the Contractor with immediate effect where an Insolvency Event affecting the Contractor occurs.
   2. Termination on change of control
      1. The Contractor shall notify DfE immediately in writing and as soon as the Contractor is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
      2. The Contractor shall ensure that any notification made pursuant to **clause 26.2.1** shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
      3. DfE may terminate this Framework Agreement by written notice to the Contractor with immediate effect under **clause 26.2** to the Contractor within six (6) Months of:
         1. being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
         2. where no notification has been made, the date that DfE becomes aware that a Change of Control is anticipated or is in contemplation or has occurred, but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
2. TERMINATION ON DEFAULT
   1. DfE may terminate the Framework Agreement (in whole or in part) by written notice to the Contractor with immediate effect if:
      1. the Contractor commits a material breach and:
         1. the Contractor has not remedied the material breach to the satisfaction of DfE within 20 Business Days or such other period as may be specified by DfE after issue of the written notice specifying the material breach and requesting it to be remedied; or
         2. the material breach is not, in the reasonable opinion of DfE, capable of remedy;
      2. there is a material detrimental change in the financial standing and/or credit rating of the Contractor which adversely impacts on the Contractor’s ability to supply Services under the Framework Agreement or any Call-Off Contract;
      3. a Call-Off Contract has been terminated for Default;
      4. the Contractor fails to carry out its obligations under **clause 7 (Conflicts)** or where in the reasonable opinion of DfE there is any continuing Conflict of Interest which has not been resolved in accordance within **clause 7 (Conflicts)** within a reasonable period of time; or
      5. the Contractor fails to deliver its obligations under a Rectification Plan in accordance with its terms or the parties fail to agree a Rectification Plan in accordance with the Rectification Plan Process within a reasonable time.
3. TERMINATION UNDER THE PUBLIC CONTRACTS REGULATIONS
   1. DfE may terminate the Framework Agreement (in whole or in part) on written notice with immediate effect to the Contractor if:
      1. the Framework Agreement has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations;
      2. the Contractor was, at the time the Framework Agreement was awarded, in one of the situations specified in regulation 57(1) of the Public Contracts Regulations, including as a result of the application of regulation 57(2) thereof, and should therefore have been excluded from the procurement procedure which resulted in its award of the Framework Agreement; or
      3. the Framework Agreement should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaty on European Union, Treaty of the Functioning of the European Union or the Public Contracts Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.
4. other termination rights
   1. In addition to any other rights to terminate under this Framework Agreement DfE has the right to terminate this Framework Agreement (in whole or in part) at any time without cause by giving three (3) months written notice to the Contractor.
   2. Either party may terminate the Framework Agreement (in whole or in part) on written notice with immediate effect the Contractor’s continued appointment under the Framework Agreement would be unlawful under Law.
5. SUSPENSION
   1. Without prejudice to the right of DfE to terminate the Framework Agreement pursuant to **clause 27 (****Termination on Default)**, DfE may suspend the Contractor’s right to receive Engagements by giving notice in writing to the Contractor where:
      1. a right to terminate the Framework Agreement has arisen in accordance with **clause 27 (****Termination on Default)**; or
      2. the Contractor has failed to carry out an appropriate conflict check or to monitor and manage a potential conflict situation in accordance with **clause 7 (Conflicts of Interest)** of the Framework Agreement;
      3. the Contractor is currently in the process of agreeing or delivering a Rectification Plan in accordance with **clause 25 (Service Rectification and Remedies)** of the Framework Agreement.
   2. The Parties agree that the Contractor shall not be entitled to receive any Engagements or to participate in any call off award procedures as further described in **Schedule 5 (****Call-Off Contract Award Procedure)** during the period of any such suspension.
   3. A notice given to a Contractor pursuant to **clause 30.1** must specify the period of suspension (or the conditions to be met for such suspension to be lifted). For the avoidance of doubt, no period of suspensions under this **clause 30** shall result in an extension of the Framework Term.
6. CONSEQUENCES OF TERMINATION
   1. Call-Off Contracts do not expire automatically on the termination or expiry of this Framework Agreement and will continue in force unless and until they are terminated or expire in accordance with the Call-Off Contract.
   2. Termination or expiry of the Framework Agreement or any Call-Off Contract shall not affect the continuing rights, remedies or obligations of DfE or the Contractor under **clauses 8 (****Warranties and Representations), 11 (Prevention of Fraud and Bribery), 13 (****Personnel), 16 (Official Secrets Act), 17 (****Confidential Information), 18 (Freedom of Information), 19 (****Data Protection), 21 (Publicity), 23 (****Intellectual Property Rights) 23 (****Record Keeping and Audit), 31 (Consequences of Termination), 32 (****Recovery upon Termination), 34 (Exit Management), 42 (****Dispute Resolution), 45 (Governing Law)** or any other obligations which are either expressed to or by implication, are intended to survive termination or expiry.
7. RECOVERY UPON TERMINATION
   1. On the termination of the Framework Agreement for any reason, the Contractor shall at its cost:
      1. subject to **clause 32.2**, immediately return to DfE or destroy, upon DfE’s written instruction, all Confidential Information, Personal Data and DfE Materials in its possession or in the possession or under the Control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of this Framework Agreement and/or providing the Services;
      2. immediately deliver to DfE all DfE Property (including materials, documents, information and access keys) provided to the Contractor. Such Property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
      3. assist and co-operate with DfE to ensure an orderly transition of the provision of the Services to a Replacement Contractor and/or the completion of any work in progress; and
      4. promptly provide all information concerning the provision of the Services which may reasonably be requested by DfE for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing DfE and/or a Replacement Contractor to conduct due diligence.
   2. The Contractor shall be entitled to retain one copy of any information that it is required to retain under Law or under the terms of this Framework Agreement.
   3. If the Contractor fails to comply with this **clause 32.1**, DfE may recover possession of the Property and the Contractor grants a licence to DfE or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.
8. RETENDERING AND HANDOVER
   1. Within 21 Business Days of being so requested by DfE, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable DfE to issue tender documents for the future provision of the Services.
   2. DfE shall take all necessary precautions to ensure that the information referred to in **clause 33.1** is given only to potential contractors who have qualified to tender for the future provision of the Services.
   3. DfE shall require that all potential contractors treat the information referred to in **clause 33.1** in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by DfE, and that they shall not use it for any other purpose.
   4. The Contractor shall co-operate fully with DfE during the handover arising from the completion or earlier termination of the Framework Agreement or any Call-Off Contract. This co-operation, during the period of the new Contractor setting up operations, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
   5. Within 10 Business Days of being so requested by DfE, the Contractor shall transfer to DfE, or any person designated by DfE, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by DfE.
9. EXIT MANAGEMENT
   1. Where relevant, the Contractor shall allow access to the Premises in the presence of DfE’s authorised representative, to any person representing any potential contractor whom DfE has selected to tender for the future provision of the Services. If access is required to the Contractor’s Premises for the purposes of this clause, DfE shall give the Contractor seven (7) days’ notice of a proposed visit together with the names of all persons who will be visiting.
   2. Upon termination the Contractor shall render reasonable assistance to DfE to the extent necessary to effect an orderly assumption by a Replacement Contractor of the provision of Services.
   3. Where DfE requires continued provision of all or any of the Services on expiry or termination of this Framework Agreement, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with DfE and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the provision of Services without disruption to routine operational requirements.
10. KNOWLEDGE RETENTION
    1. The Contractor shall co-operate fully with DfE in order to enable an efficient and detailed knowledge transfer from the Contractor to DfE on the completion or earlier termination of the Framework Agreement or any Call-Off Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide DfE free of charge with full access to its Personnel, and in addition, copies of all documents, reports, summaries and any other information requested by DfE. The Contractor shall comply with DfE’s request for information no later than 15 Business Days from the date that that request was made.
11. COLLABORATION
    1. In providing Services pursuant to this Framework Agreement and the Call-Off Contracts, the Contractor shall co-operate with all other organisations present on the Premises in accordance with security requirements in the Call-Off Contract and in accordance with all instructions given to the Contractor by DfE or person in charge of the Premises.
    2. The Contractor shall at all times during the Framework Term and the term of any Call-Off Contract at its own cost:
       1. be open and inclusive at all levels with DfE, and where instructed to do so with any Reliance Party, Framework Provider or other persons working with DfE;
       2. participate fully in any governance, change control and other management activities anticipated or required by DfE all work in progress costs and expenses as against the fixed Charges in any Engagement Letter; and
       3. where requested to do so provide access to information and materials to a Reliance Party, other Framework Provider or other persons working with DfE for the purposes of the performance or receipt of services (including where requested to facilitate peer review of Deliverables).
    3. Where the Contractor is required to share information in accordance with **clause 36 (Collaboration),** it shall enter into (and DfE shall procure that the party receiving such information shall enter into) a non-disclosure agreement in substantially the form set out in **Schedule 10 (Non-Disclosure Agreement)**.
12. STATUS OF THE PARTIES
    1. Nothing in this Framework Agreement, nor any actions taken by DfE and the Contractor pursuant to this Framework Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.
13. TRANSFER AND SUB-CONTRACTING
    1. The Framework Agreement is personal to the Contractor and the Contractor shall not:
       1. assign, novate or otherwise dispose of the Framework Agreement in whole or in part without the prior Approval of DfE; or
       2. sub-contract any of its rights or obligations under the Framework Agreement without the prior Approval of DfE; or
       3. sub-contract any functions of an Insolvency Practitioner (as the same Service is described in the Framework Specification) following their appointment under an Enagagement Letter.
    2. DfE is entitled to:
       1. novate the Framework Agreement or any Call-Off Contract to any other body which substantially performs any of the functions that previously had been performed by DfE provided that such assignment, novation or disposal does not unreasonably increase the burden of the Contractor’s obligations under the Framework Agreement or any Call-Off Contract.
    3. Where DfE has consented to the placing of Sub-Contracts, the Contractor shall:
       1. advertise any Sub-Contracting requirements with a value over £25,000 on the government Contracts Finder procurement portal in place from time to time;
       2. provide reports upon request to DfE detailing the Contractor’s level of spend on Sub-Contracting and the Contractors level of spend with SME (small and medium enterprise) and VCSE (voluntary, community and social enterprise) organisations in their performance of the Services;
       3. notify DfE the name(s), contact details and legal representatives of the Sub-Contractor(s) and copies of each Sub-Contract shall, at the request of DfE, be sent by the Contractor to DfE promptly on request.
       4. ensure that any terms included in a Sub-Contract shall include obligations no less onerous that those imposed on the Contractor in this Framework Agreement or any Call-Off Contract in respect of:
          1. data protection requirements as set out in **clause 19 (Data Protection)** and **Schedule 11 (Processing Personal Data and Data Subjects);**
          2. FOIA requirements set out in **clause 18 (Freedom of Information)**;
          3. conduct of audits as set out in **clause 23 (Record Keeping and Audit)**;
          4. Conflicts and Reliance as set out in **clauses 7 (Conflicts of Interest)** and **9 (Reliance and Disclosure)**;
          5. IPR provisions materially consistent with **clause 22 (Intellectual Property Rights)**;
          6. a provision under CRTPA for DfE to enforce any provision which are capable of conferring a benefit on DfE; and
          7. a restriction on further sub-contracting without the consent of DfE;
       5. pay any undisputed invoices due from it to a Sub-Contractor within 30 days of verifying that the invoice is valued and undisputed;
       6. at all times remain responsible for all acts and omissions of its Sub-Contractors as if they were its own; and
       7. not terminate or materially amend the terms of any Sub-Contract without DfE's prior written consent.
    4. DfE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to DfE’s right of termination pursuant to **clause 27 (****Termination on Default)** unless the Sub-Contractor can remedy the breach to DfE’s satisfaction within 21 days of receipt by the Contractor of written notice from DfE requiring the Sub-Contract to be terminated.
    5. If DfE believes there are:
       1. compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Public Contracts Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
       2. non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Public Contracts Regulations, DfE may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall promptly comply with such requirement.
14. VARIATIONS TO THE FRAMEWORK AGREEMENT
    1. Subject to the provisions of this **clause 39 (Variations to the** **Framework Agreement)**, DfE may request a Variation to this Framework Agreement provided that such Variation does not amount to a material change of this Framework Agreement within the meaning of the Public Contracts Regulations and the law.
    2. DfE may, at its own instance, or where in its sole and absolute discretion it decides to having been requested to do so by the Contractor, request a Variation by completing and sending the Change Control Notice as set out in **Schedule 9 (****Change Control Notice)** to the Contractor, giving sufficient information for the Contractor to assess the extent of the proposed Variation and any additional cost that may be incurred.
    3. In the event that the Contractor is unable to agree to or provide the Variation, DfE may:
       1. agree to continue to perform its obligations under this Framework Agreement without the Variation; or
       2. terminate this Framework Agreement with immediate effect.
    4. The Variations shall cover:
       1. operational changes, which may require a variation to the way in which Services are provided, but do not require a Variation to this Framework Agreement; and
       2. agreement changes, which may require a Variation to the Framework Agreement.
    5. Legislative Change
       1. The Contractor shall neither be relieved of its obligations under this Framework Agreement or any Call-Off Contract nor be entitled to an increase in the Charges as a result of a:
          1. General Change in Law; or
          2. Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the at the Framework Commencement Date.
       2. If a Specific Change in Law occurs or will occur during the Framework Term, the Contractor shall:
          1. notify DfE as soon as reasonably practicable of the likely effects of that change including:
             1. whether any Variation is required to the provision of the Services, the Charges, the Charging Matrix or the terms of this Framework Agreement or any Call-Off Contract; and
             2. whether any relief from compliance with the Contractor’s obligations is required;
          2. provide DfE with evidence
             1. that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
             2. as to how the Specific Change in Law has affected the cost of providing the Services; and
             3. demonstrating that any expenditure that has been avoided has been taken into account in proposing any amendment to the Charges or the Charging Matrix;
       3. Any Variation required shall be implemented in accordance with the process set out at **clauses 39.1** to **39.4**.
15. RIGHTS OF THIRD PARTIES
    1. Save as expressly provided in this Framework Agreement, a person, other than a Reliance Party, who is not a party to the Framework Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him. This clause does not affect any right or remedy of a third party which exists, or is available, otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.
16. ENTIRE AGREEMENT
    1. This Framework Agreement constitutes the entire agreement and understanding between the parties to this Framework Agreement in respect of the matters dealt with in this Framework Agreement. This Framework Agreement supersedes all prior negotiations between DfE and the Contractor and all representations and undertakings made by one party to the other, whether written or oral, except that this clause does not exclude liability in respect of any fraud or fraudulent misrepresentation.
17. DISPUTE RESOLUTION
    1. The Contractor and DfE shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Framework Agreement or any Call-Off Contract within 20 Business Days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent senior employee) of the Contractor and DfE’s commercial director.
    2. Nothing in this dispute resolution procedure shall prevent DfE from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
    3. If the dispute cannot be resolved by the Contractor and DfE pursuant to **clause 42.1** either party may refer it to mediation pursuant to the procedure set out in **clause 42.5**.
    4. The obligations of the parties under the Framework Agreement and any Call-Off Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Personnel shall comply fully with the requirements of the Framework Agreement and any Call-Off Contract at all times.
    5. The procedure for mediation and consequential provisions relating to mediation are as follows:
       1. A neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 10 Business Days after a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within 10 Business Days from the date of the proposal to appoint a Mediator or within 10 Business Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
       2. The parties shall within 10 Business Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If considered appropriate, the parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
       3. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
       4. If the parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the parties once it is signed by their duly authorised representatives.
       5. Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Framework Agreement or any Call-Off Contract without the prior written consent of both parties.
       6. If the parties fail to reach agreement in the structured negotiations within 60 Business Days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts unless the dispute is referred to arbitration pursuant to the procedures set out in **clause 42.6**.
    6. Subject to **clause 42.2**, the parties to this Framework Agreement or any Call-Off Contract shall not institute court proceedings until the procedures set out in **clauses 42.1** and **42.3** have been completed save that:
       1. DfE may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with **clause 42.7**;
       2. If the Contractor intends to commence court proceedings, it shall serve written notice on DfE of its intentions and DfE shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with **clause 42.7** and
       3. The Contractor may request by notice in writing to DfE that any dispute be referred and resolved by arbitration in accordance with **clause 42.7**, to which DfE may consent as it sees fit.
    7. In the event that any arbitration proceedings are commenced pursuant to **clause 42.6**:
       1. the arbitration shall be governed by the provisions of the Arbitration Act 1996;
       2. DfE shall give a written notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:
          1. that the dispute is referred to arbitration; and
          2. providing details of the issues to be resolved;
       3. the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance **with clause 42.7.2** shall be applied and are deemed to be incorporated by reference to the Framework Agreement and the decision of the arbitrator shall be binding on the parties in the absence of any material failure to comply with such rules;
       4. the tribunal shall consist of a sole arbitrator to be agreed by the parties;
       5. if the parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by DfE under **clause 42.7.2** or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
       6. the arbitration proceedings shall take place in London and in the English language; and
       7. the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.
18. NOTICES
    1. Subject to **clause 43.3**, where the Framework Agreement states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Jaggaer.
    2. If it is not returned as undelivered a notice served:
       1. in a letter is deemed to have been received two (2) Business Days after the day it was sent; and
       2. in an email or via Jaggaer is deemed to have been received 4 hours after the time it was sent provided it was sent on a Business Day

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

* 1. Notices pursuant to **clause 42 (Dispute Resolution)** or to terminate the Framework Agreement are valid only if served in a letter by hand, recorded delivery or special delivery.
  2. Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Framework Agreement:

**For DfE:**

Contact Name: <redacted><redacted>;

Address: <redacted>; and

Email: <redacted><redacted>

**For the Contractor:**

Contact Name: <redacted><redacted>;

Address: <redacted>; and

Email: <redacted><redacted>.

1. WAIVER
   1. No failure or delay by a party to exercise any right or remedy provided under this Framework Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
2. GOVERNING LAW
   1. The Framework Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of DfE to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

**FRAMEWORK AGREEMENT**



**DEFINITIONS**

* + 1. In this framework agreement, unless the context requires otherwise, the following words and phrases shall have the following meanings:

|  |  |
| --- | --- |
| **Word or phrase** | **Meaning** |
| “Affiliate” | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time. |
| “Approval” | the written consent of DfE. |
| “Auditor” | shall comprise any of the following:   1. DfE’s internal and external auditors; 2. DfE’s statutory or regulatory auditors; 3. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; 4. HM Treasury or the Cabinet Office; 5. any party formally appointed by DfE to carry out audit or similar review functions; and 6. successors or assigns of any of the above. |
| “Business Day” | any day from Monday to Friday, excluding any bank or other national holidays in England, Wales or Scotland. |
| “Call-Off Contract” | the agreement between DfE and the Contractor consisting of the Engagement Letter, the Call-Off Terms and Conditions, together with any schedules annexes and appendices referred to therein. In the event of any conflict between any of these documents, they shall be given precedence in the order listed. |
| “Call-Off Contract Specification” | in respect of any Call-Off Contract, those Services as detailed in the specification set out in an Engagement Letter. |
| “Call-Off Terms and Conditions” | the standard terms and conditions of the Call-Off Contract as set out in **Schedule 6 (****Call-Off Terms and Conditions)**. |
| “Change of Control” | a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010. |
| “Change Control Notice”/”CCN” | the Change Control Notice set out in **Schedule 9** **(****Change Control Notice)** containing details of agreed Variations to the Framework Agreement. |
| “Charges” | the charges for Services set out in an Engagement Letter and based on the Charging Matrix. |
| “Charging Matrix” | the pricing matrices set out in **Schedule 4 (****Charging Matrix)** to this Framework Agreement. |
| “Commercially Sensitive Information” | the information included at **Schedule 12 (****Commercially Sensitive Information)** to the Framework Agreement and/or listed in or accompanying or attached to the Engagement Letter comprised of information:   1. the Contract Price; 2. details of the Contractor’s Intellectual Property Rights; 3. which is provided by the Contractor to DfE in confidence for the period set out in the Engagement Letter; or 4. any information that would be regarded as commercially sensitive by a reasonable business person relating to:    1. the business, affairs, plans of the Contractor; and    2. the operations, processes, product information, know-how, designs, trade secrets or software of the Contractor. |
| “Comptroller and Auditor General” | the head of the National Audit Office who is the government official responsible for supervising the quality of public accounting and financial reporting. |
| “Confidential Information” | any information which has been designated as confidential by the disclosing party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of the disclosing party and all Personal Data. Confidential Information shall not include information which:   1. was public knowledge at the time of disclosure (otherwise than by breach of the Framework Agreement or any Call-Off Contract; 2. was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party; 3. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or 4. is independently developed without access to the Confidential Information. |
| “Contracting Body” | shall mean those Contracting Bodies as listed in the OJEU Notice.  and shall include any Crown Body or any other body which substantially performs the functions that had previously been performed by a Contracting Body. |
| “Contractor” | the party appointed as a potential Contractor of Services as identified in [**Section 1**](#Section1)**(Form of Agreement)**. |
| “Contractor Background IPRs” | 1. Intellectual Property Rights owned by the Contractor before the Framework Commencement Date, for example those subsisting in the Contractor’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor’s know-how or generic business methodologies; and/or 2. Intellectual Property Rights created by the Contractor independently of the Framework Agreement or any Call-Off Contract. |
| “Contractor Equipment” | the Contractor’s equipment including computer hardware, consumables, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under any Call-Off Contract. |
| “Contractor’s Representative” | any competent person appointed by the Contractor to be his representative in relation to the performance of the Framework Agreement or any Call-Off Contract. |
| “Contract Price” | the price (exclusive of any applicable VAT), payable to the Contractor by DfE under any Call-Off Contract, as set out in the Engagement Letter, for the full and proper performance by the Contractor of its obligations under the Call-Off Contract. |
| “Contract Year” | a consecutive period of twelve (12) months commencing on the Framework Commencement Date or each anniversary thereof. |
| “Control” | that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “**Controls**” and “**Controlled**" shall be interpreted accordingly. |
| “Controller” | has the meaning given in the GDPR. |
| “Comparable Supply” | the supply of services to another customer of the Contractor that are the same or similar to the Services. |
| “Crown” | the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, non-departmental public bodies, government offices and government agencies and “**Crown Body**” is an emanation of the foregoing. |
| “DfE” | the Secretary of State for Education. |
| “DfE Data” | any or all   1. data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:    1. supplied to the Contractor by or on behalf of DfE; or    2. which the Contractor is required to generate, process, store or transmit pursuant to the Framework Agreement or any Call-Off Contract (including any photographs or other images taken by the Contractor’s Personnel on the Premises); or 2. any Personal Data for which DfE is the Controller. |
| “DfE Materials” | all guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, images, videos or other material which is furnished to or made available to the Contractor by or on behalf of DfE and/or any Personal Data for which DfE is Data Controller. |
| “DfE’s Representative” | an authorised representative nominated by DfE. |
| “DfE System” | DfE computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by DfE. |
| “Data Loss Event” | any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under the Framework Agreement or any Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Framework Agreement, including any Personal Data Breach. |
| “Data Protection Impact Assessment” | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. |
| “Data Protection Legislation” | 1. the GDPR, the LED and any applicable national implementing Laws as amended from time to time; 2. the DPA 2018 to the extent that it relates to processing of personal data and privacy; and 3. all applicable Law about the processing of personal data and privacy. |
| “Data Protection Officer” | has the meaning given in the GDPR. |
| “Data Subject” | has the meaning given in the GDPR. |
| “Data Subject Request” | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. |
| “Default” | any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant party or the Personnel in connection with or in relation to the subject-matter of the Framework Agreement or any Call-Off Contract and in respect of which such party is liable to the other. |
| “Deliverables” | the deliverables to be provided by the Contractor as part of the Services including without limitation, any report, written or oral advice, or other materials produced by the Contractor in the provision of the Services. |
| “DfE Assets” | DfE’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to DfE and which is or may be used in connection with the provision of the Services. |
| “DfE Data” | 1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any DfE’s Confidential Information, and which:    1. are supplied to the Contractor by or on behalf of DfE; or    2. the Contractor is required to generate, process, store or transmit pursuant to this Framework Agreement; or 2. any Personal Data for which DfE is the Controller. |
| “DfE Trade Mark” | any registered on unregistered trade mark owned by or licensed to DfE. |
| “Disaster Recovery Services” | the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster. |
| “Disaster Recovery System” | the system means the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster. |
| “DOTAS” | the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992. |
| “DPA 2018” | the Data Protection Act 2018. |
| “Due Diligence Information” | any information supplied to the Contractor by or on behalf of DfE or any Education Provider prior to the Framework Commencement Date, or prior to the Effective Date of any Call-Off Contract. |
| “Education Provider” | 1. a further education college or sixth form college in England and Wales; 2. an academy trust in England and Wales; or 3. an “English higher education provider”, as that expression is defined in section 83(1) of the Higher Education and Research Act 2017; or 4. any other learning or education provider funded by government in England and Wales from time to time. |
| “Effective Date” | the date defined in the Call-Off Contract upon which the Call-Off Contract commences. |
| “Engagement” | an order for Services sent by DfE to the Contractor in accordance with the procedure set out in **Schedule 5 (****Call Off Contract Award Procedure)**. |
| “Engagement Letter” | the document DfE will send to the Contractor setting out the details of the Engagement for the Services it requires from the Contractor in the form set out in **Schedule 7 (Engagement Letter)** to this Framework Agreement. |
| “Environmental Information Regulations” or “EIR” | the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations. |
| “Exit Day” | shall have the meaning set out in the European Union (Withdrawal) Act 2018. |
| “FOIA” | the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. |
| “Framework Agreement” | this Framework Agreement for the provision of the Services between DfE and Contractor, together with any schedules, annexes and appendices appended to the foregoing. |
| “Framework Commencement Date” | the 16th April 2021 |
| “Framework Expiry Date” | the date immediately before the second anniversary of the Framework Commencement Date. |
| “Framework Provider” | the Contractor and any other supplier who is appointed to the framework procured further to the OJEU notice to provide Services to DfE; |
| “Framework Term” | The duration of this Framework Agreement set out in **clause 3 (Term of Framework Agreement)** including any Extensions**.** |
| “Framework Specification” | the specification (including any related performance measurements, requirements, protocols and targets) of the Services set out in **Schedule 2 (Specification)** of this Framework Agreement. |
| “Fraud” | any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts defrauding or attempting to defraud or conspiring to defraud the Crown. |
| “GDPR” | the General Data Protection Regulation (Regulation (EU) 2016/679) to the extent it applies in the UK. |
| “General Anti-Abuse Rule” | 1. the legislation in Part 5 of the Finance Act 2013; and 2. any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions; |
| “General Change in Law” | a change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor or affects or relates to a Comparable Supply. |
| “Good Industry Practice” | standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances. |
| “Government” | the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf. |
| “Halifax Abuse Principle” | the principle explained in the CJEU Case C-255/02 Halifax and others. |
| “HMG Security Policy Framework” | the Cabinet Office Security Policy Framework as updated from time to time, a copy of which may be found at: <https://www.gov.uk/government/publications/security-policy-framework> |
| “Hold Harmless Letter” | a letter to be entered into by the Contractor and a Reliance Party or a third party in accordance with **clause 9.5 (Reliance and Disclosure).** |
| “Indemnified Person” | * + - 1. DfE;   (b)a Reliance Party or Replacement Contractor who is granted a licence in any Relevant IPRs in accordance with **clause 22 (Intellectual Property Rights)**; and   1. each and every person to whom DfE (or any direct or indirect sub-licensee of DfE) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Framework Agreement. |
| “Information” | has the meaning given under section 84 of the FOIA. |
| “Insolvency Event” | in respect of the Contractor or Call Off Guarantor (as applicable):   1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or for any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or 2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or 3. a petition is presented for its winding up (which is not dismissed within 14 Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or 4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or 5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or 6. it is or becomes (or admits that it is) insolvent within the meaning of section 123 of the Insolvency Act 1986 (but omitting the words “it is proved to the satisfaction of the court that”); or 7. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or 8. where the Contractor or Call-Off Guarantor (if any) is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or 9. the Contractor proposes or implements (or there is declared in respect of the borrower) a suspension of payments, a moratorium in respect of any indebtedness or liabilities or reorganisation; or 10. any event analogous to those listed in limbs (a) to (i) (inclusive) occurs under the law of any other jurisdiction. |
| “Intellectual Property Rights” or “IPRs” | patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, know-how, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. |
| “Invitation to Tender” or “ITT” | the Invitation to Tender for a framework with Tender Reference itt\_376, Itt\_379 issued on 4th November 2020 and all related documents published by DfE and made available to the Contractor and other tenderers. |
| “IP Materials” | any materials used or developed for the purposes of the Framework Agreement including Framework Specific IP Materials, any programme materials, guidance, papers and research data, results, contract specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs. |
| “IPRs Claim” | any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs in combination with any item not supplied or recommended by the Contractor pursuant to this Framework Agreement or for a purpose not reasonably to be inferred from the Framework Specification or the provisions of this Framework Agreement. |
| “Jaggaer” | has the meaning given in **paragraph 3 of Section 1 (Form of Agreement)**. |
| “Joint Control” or “Joint Controllers” | where two or more Controllers jointly determine the purposes and means of processing. |
| “Key Performance Indicators” | the key performance indicators in relation to the Services set out in, **Schedule 13 (Key Performance Indicators)** of the Framework Agreement, and set out in the Engagement Letter which the Contractor shall comply with. |
| “Know-How” | all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods). |
| “Law” | any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the relevant Party is bound to comply. |
| “LED” | the Law Enforcement Directive (Directive (EU) 2016/680) to the extent it applies in the UK. |
| “Losses” | losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise. |
| “Lot 1 Services” | services as so defined in the Framework Specification. |
| “Lot 2 Services” | services as so defined in the Framework Specification. |
| “Lot 3 Services” | services as so defined in the Framework Specification. |
| “Malicious Software” | any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence. |
| “Month” | calendar month. |
| “Monthly Performance Report” | shall be as defined in **clause 24.1.1 (Reporting and Meetings)**. |
| “Notifiable Default” | shall be as defined in **clause 25.2 (Service Rectification and Remedies)**. |
| “Occasion of Tax Non-Compliance” | 1. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:    1. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;    2. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or 2. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or, with respect to a Call-Off Contract, the Effective Date, or to a civil penalty for fraud or evasion. |
| “OJEU Notice” | the contract notice 2020/s 218-536579 dated 9th November 2020 published in the Official Journal of the European Union |
| “Party” | 1. if the term is used within [Section 2](#Section2) (Standard Terms and Conditions of Framework Agreement), any party to the Framework Agreement and 2. if the term is used within a Call-Off Contract, any party to a Call-Off Contract. |
| “Personal Data” | has the meaning given in the GDPR. |
| “Personal Data Breach” | has the meaning given in the GDPR. |
| “Personnel” | all persons employed by the Contractor to perform its obligations under the Framework Agreement and Call-Off Contract together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Framework Agreement. |
| “Premises” | the location where the Services are to be performed, as such location is identified in the Engagement Letter. |
| “Processor” | has the meaning given in the GDPR. |
| “Prohibited Act” | any of the following which constitute prohibited acts:   1. to directly or indirectly offer, promise or give any person working for or engaged by DfE a financial or other financial or other advantage to:    1. induce that person to perform improperly a relevant function or activity; or    2. reward that person for improper performance of a relevant function or activity; 2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement or any Call-Off Contract; 3. committing any offence:    1. under the Bribery Act 2010;    2. under legislation creating offences concerning fraudulent acts    3. at common law concerning fraudulent acts relating to the Framework Agreement, any Call-Off Contract or any other contract with DfE; or    4. defrauding, attempting to defraud or conspiring to defraud DfE. |
| “Property” | the property, other than real property, issued or made available to the Contractor by DfE in connection with the Framework Agreement. |
| “Protective Measures” | appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it. |
| “Public Contracts Regulations” | the Public Contracts Regulations 2015 (SI 2015/102) |
| “Quality Standards” | the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification and/or the Engagement Letter. |
| “Rectification Plan” | the plan prepared by the Contractor in accordance with **clause 25.4 (Service Rectification and Remedies)**. |
| “Rectification Plan Process” | the remedial process as described in **clauses 25.2 to 25.6 (Service Rectification and Remedies)**. |
| “Regulatory Bodies” | means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or Call-Off Contract or any other affairs of DfE and “**Regulatory Body**” shall be construed accordingly. |
| “Relevant IPRs” | IPRs used to provide the Services or as otherwise provided and/or licensed by the Contractor (or to which the Contractor has provided access) to DfE or a third party in the fulfilment of the Contractor’s obligations under this Framework Agreement but excluding the DfE IP Materials which shall include without limitation Contractor Background IPRs and Framework Specific IPRs. |
| “Relevant Tax Authority” | HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in which the Contractor is established. |
| "Relevant Conviction" | a conviction for an offence involving violence or dishonesty, of a sexual nature or against minors, or for any other offence that is relevant to the nature of the Services and/or relevant to the work of DfE. |
| “Relevant Requirements” | all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010. |
| “Reliance Letter” | a letter to be entered into by the Contractor and a Reliance Party in accordance with **clause 9.1** (**Reliance and Disclosure**)**.** |
| “Reliance Party” | the persons or entities entitled to receive access to the Deliverables produced by the Contractor as part of the Services in accordance with **clause 9 (****Reliance and Disclosure)** of the Framework Agreement, as such Reliance Party may be named in an Engagement Letter |
| “Replacement Contractor” | any third party service Contractor appointed by DfE to supply any Services which are substantially similar to any of the Services and which DfE receives in substitution for any of the Services following the expiry, termination or partial termination of a Call-Off Contract. |
| “Request for Information” | a request for information under the FOIA or the Environmental Information Regulations. |
| “Service Levels” | the service levels in relation to the Services set out in an Engagement Letter which the Contractor shall comply with and report on. |
| “Services” | in relation to the Framework Agreement, the services described in the Specification and in relation to any Call-Off Contract the Services described in the Engagement Letter. |
| “Specific Change in Law” | means a change in Law that relates specifically to the business of DfE and which would not affect a Comparable Supply. |
| “Standards” | any:   1. standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with; 2. standards detailed in the Framework Specification; 3. standards detailed by DfE in the Call-Off Contract Terms and Conditions, Call-Off Contract Specification, Engagement Letter or otherwise agreed between the Parties from time to time; 4. relevant Government codes of practice. |
| “Sub-Contractor” | a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or Affiliate of the Contractor) whose services and/or goods are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and “**Sub-Contract**” shall be construed accordingly. |
| “Sub-processor” | any third party appointed to process Personal Data on behalf of the Contractor related to the Framework Agreement or any Call-Off Contract. |
| “Tender” | documents and information submitted by the Contractor to DfE in response to DfE’s Invitation to Tender. References to the Tender shall also include all responses given by the Contractor in response to the selection questions as part of the assessment of the Contractor’s suitability at Stage 2 of the ITT. |
| “Variation” | any amendment of or change to the Framework Agreement or Call-Off Contract. |
| “VAT” | value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994. |

**FRAMEWORK AGREEMENT**



**SPECIFICATION**



**FRAMEWORK AGREEMENT**



**CONTRACTORS TENDER**

**Lot 1 – Restrucutring Services Tender Response**

<redacted>

**Lot 3 – Audit and Assurance Tender response**

<redacted>

**FRAMEWORK AGREEMENT**



**CHARGING MATRIX**

**Lot 1 – Restrucutring Services Rate Card**

<redacted>

|  |  |  |  |
| --- | --- | --- | --- |
| **Rate Card - National** |  |  |  |
| Role names and Rates for the National Rate card | | | |
|  |
|  |  |  |  |  |
| **Grade** | **Role** | **Hourly Rate £ (Exc VAT)** | **Daily Rate £ (Exc VAT)** |  |
| Partner | <redacted> | <redacted> | <redacted> |  |
| Director | <redacted> | <redacted> | <redacted> |  |
| Senior Manager | <redacted> | <redacted> | <redacted> |  |
| Manager (Insolvency Practitioner) | <redacted> | <redacted> | <redacted> |  |
| Senior Associate | <redacted> | <redacted> | <redacted> |  |
| Real Estate at Senior Manager | <redacted> | <redacted> | <redacted> |  |
| Other Staff - Administrator | <redacted> | <redacted> | <redacted> |  |
| Other Staff - Administrator | <redacted> | <redacted> | <redacted> |  |
|  |  |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Rate Card - London** |  |  |  |
| Role names and Rates for London Rates card. | | | |
|  |
|  |  |  |  |  |
| **Grade** | **Role** | **Hourly Rate £ (Exc VAT)** | **Daily Rate £ (Exc VAT)** |  |
| Partner | <redacted> | <redacted> | <redacted> |  |
| Director | <redacted> | <redacted> | <redacted> |  |
| Senior Manager | <redacted> | <redacted> | <redacted> |  |
| Manager (Insolvency Practitioner) | <redacted> | <redacted> | <redacted> |  |
| Senior Associate | <redacted> | <redacted> | <redacted> |  |
| Real Estate at Senior Manager | <redacted> | <redacted> | <redacted> |  |
| Other Staff - Administrator | <redacted> | <redacted> | <redacted> |  |
| Other Staff - Administrator | <redacted> | <redacted> | <redacted> |  |
|  |  |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Rates for Other areas for example (Forensic Costs such as mirroring services, Estates Advice etc) | | | |
|  |
|  | | | |  |
| **Grade** | **Role** | **Hourly Rate £ (Exc VAT)** | **Daily Rate £ (Exc VAT)** |  |
| Partner | <redacted> | <redacted> | <redacted> |  |
| Director | <redacted> | <redacted> | <redacted> |  |
| Senior Manager | <redacted> | <redacted> | <redacted> |  |
| Manager (Insolvency Practitioner) | <redacted> | <redacted> | <redacted> |  |
| Senior Associate | <redacted> | <redacted> | <redacted> |  |
| Real Estate at Senior Manager | <redacted> | <redacted> | <redacted> |  |
| Other Staff - Administrator | <redacted> | <redacted> | <redacted> |  |
| Other Staff - Administrator | <redacted> | <redacted> | <redacted> |  |
|  |  |  |  |  |

**Discount Structure**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Volume Discount** |  |  |  |  |  |
| Discounts will apply from framework commencement - When the aggregate value across all users of the framework and all lots awarded meets the thresholds set out below within the contract period, the discount would be applied to all calls offs made within the remainder of the framework term including any extension period. | | | | | |
|  |
|  |
| **Threshold Value** | **% Discount applied** |  |  |  |  |  |
| up to £250,000 | <redacted> |  |  |  |  |  |
| £250,000.00 | <redacted> |  |  |  |  |  |
| £500,000.00 | <redacted> |  |  |  |  |  |
| £750,000.00 | <redacted> |  |  |  |  |  |
| £1,000,000.00 | <redacted> |  |  |  |  |  |
| £1,500,000 Plus | <redacted> |  |  |  |  |  |

**Lot 3 – Audit and Assurance Rate Card**

<redacted>

|  |  |  |  |
| --- | --- | --- | --- |
| **Rate Card - National** |  |  |  |
| Role names and Rates for National Rates | | | |
|  |
|  |  |  |  |  |
| **Grade** | **Role** | **Hourly Rate £ (Exc VAT)** | **Daily Rate £ (Exc VAT)** |  |
| Partner/Director | <redacted> | <redacted> | <redacted> |  |
| Managing Auditor/Accountant | <redacted> | <redacted> | <redacted> |  |
| Principal Auditor/Accountant | <redacted> | <redacted> | <redacted> |  |
| Senior Auditor/Accountant | <redacted> | <redacted> | <redacted> |  |
| Auditor/Accountant | <redacted> | <redacted> | <redacted> |  |
| Junior Auditor/Accountant | <redacted> | <redacted> | <redacted> |  |
| Other Staff |  |  |  |  |
| Other Staff |  |  |  |  |
|  |  |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Rate Card - London** |  |  |  |
| Role names and Rates for London Rates | | | |
|  |
|  |  |  |  |  |
| **Grade** | **Role** | **Hourly Rate £ (Exc VAT)** | **Daily Rate £ (Exc VAT)** |  |
| Partner/Director | <redacted> | <redacted> | <redacted> |  |
| Managing Auditor/Accountant | <redacted> | <redacted> | <redacted> |  |
| Principal Auditor/Accountant | <redacted> | <redacted> | <redacted> |  |
| Senior Auditor/Accountant | <redacted> | <redacted> | <redacted> |  |
| Auditor/Accountant | <redacted> | <redacted> | <redacted> |  |
| Junior Auditor/Accountant | <redacted> | <redacted> | <redacted> |  |
| Other Staff |  |  |  |  |
| Other Staff |  |  |  |  |
|  |  |  |  |  |

**Discount Structure**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Multi Lot award Discount** |  |  |  |  |  |
| Discount that would be applied if multiple lots are awarded to a supplier. To be applied to rate card upon award. Discounts will be applied to Rate cards within the relevant lots and Discounted rate cards will apply to all call offs within the relevant lots from service commencement. The Authority will expect economies of scale should more than one lot be awarded to a supplier | | | | | |
|  |
|  |
| **Lot combination** | **% Discount applied** |  |  |  |  |  |
| Lot 1 and an Other | <redacted> |  |  |  |  |  |
| Lot 2 & 3 | <redacted> |  |  |  |  |  |
| All 3 | <redacted> |  |  |  |  |  |
|  | Applies to all years including extensions |  |  |  |  |  |
|  |  |  |  |  |  |  |
| **Volume Discount** |  |  |  |  |  |  |
| Discounts will apply from framework commencement - When the aggregate value across all users of the framework and all lots awarded meets the thresholds set out below within the contract period, the discount would be applied to all calls offs made within the remainder of the framework term including any extension period | | | | | |  |
|  |
|  |
| **Threshold Value** | **% Discount applied** |  |  |  |  |  |
| up to £250,000 | <redacted> |  |  |  |  |  |
| £250,000.00 | <redacted> |  |  |  |  |  |
| £500,000.00 | <redacted> |  |  |  |  |  |
| £750,000.00 | <redacted> |  |  |  |  |  |
| £1,000,000.00 | <redacted> |  |  |  |  |  |
| £1,500,000 Plus | <redacted> |  |  |  |  |  |

**FRAMEWORK AGREEMENT**



**CALL-OFF CONTRACT AWARD PROCEDURE**

* + 1. **Call-Off Contract Award** 
       1. If DfE has a requirement for any of the Services, and subject to the remainder of this **Schedule 5**, DfE may at its option:
          1. award a Call-Off Contract without re-opening competition using the rotational process set out in **paragraph 2 (Rotation)** below; or
          2. where the circumstances in **paragraph 3.1 and 3.2 (Further Competitions**) below apply, award a Call-Off Contract following a further competition conducted in accordance with **paragraph 3 (Further Competitions)** below; or
       2. The Contractor shall be fully responsible for all of its costs in responding to any invitations to participate in a rotation appointment or a mini competition in accordance with this **Schedule 5**. The Contractor acknowledges and agrees that in no event shall DfE or any Education Provider or Reliance Party have any liability for such costs, in whole or in part, at any time regardless of whether an Engagement is concluded or otherwise.
       3. ***Lot 1 only***: where DfE has entered into a Call-Off Contract using the rotational process set out in paragraph 2 (Rotation) below, for the provision of an Independent Business Review (as the same Service is defined in the Framework Specification) in relation to an Education Provider with a Framework Provider in accordance with this **Schedule 5**, and then the DfE subsequently has a requirement for any subsequent Supplementary Activity, Education Administration or Insolvency Process (each as defined in the Framework Specification) in relation to the same Education Provider then it may at its option:
          1. enter into a Call-Off Contract without re-opening competition to the same Framework Provider who provided the Independent Business Review Services in relation to the same Education Provider; or
          2. unless the circumstances in 1.3.3 apply, award a Call-Off Contract without re-opening competition using the rotational process set out in **paragraph 2 (Rotation)** below; or
          3. where the circumstances in **paragraph 3.1 (Further Competitions)** apply or where its requirements are of a complex nature, award a Call-Off Contract following a further competition conducted in accordance with **paragraph 3** below.
    2. **Rotation** 
       1. DFE may order Services under the Framework Agreement without re-opening competition, using the following rotational process:
          1. place (following the conclusion of any conflict of interest checks in accordance with clause 8 of the Framework Agreement) the first Engagement with the Framework Provider who is first on the list set out in **Annex A to this Schedule 5 (Direct Award Rota List)**. For the next Engagement, place the Engagement with the Framework Provider next on the list and repeat the process going down the list;
          2. subject to **paragraph 3.4 (Further Competitions)** below, if the Framework Provider with whom an Engagement is due to be placed is unwilling to provide the Services or is ineligible to be invited to provide the Services under the rota for a reason set out in **paragraph 4** **(Invitation Eligability)** below, DfE may send an Engagement to the Framework Provider next on the list. Once the end of the list has been reached DfE may start again at the top of the list;
          3. repeat the process set out in **paragraph 2.1.2** until the Engagement is fulfilled or there are no further Framework Provider qualified to fulfil it.
       2. The Framework Provider who is unable to fulfil an Engagement for a reason stated in paragraph 4 below will be eligible to receive the next Engagement (provided that the next Framework Provider is willing and the circumstances in **paragraph 4 (Invitation Eligability)** no longer apply to it) and will not be passed over.
       3. The Framework Provider who is unwilling (for reasons other than those circumstances in **paragraph 4 (Invitation Eligability))** to fulfil an Engagement will not be entitled to receive the next Engagement, and DfE shall move on to the next eligible Framework Provider.
    3. **Further Competitions**
       1. DfE may (but is not required to) order Services under the Framework Agreement by further competition where:
          1. it intends to seek alternative pricing proposals to those available under the rota;
          2. its requirements include complex requirements or require specialist advice to be evaluated;
          3. where the timetable for its requirements allows for a further competition.
       2. ***LOT 3 only***: DfE shall use a further competition for all of its requirements for the Service described as: Post 16 Funding Assurance Specialist Service in section 11.2.2.1 of the Framework Specification
       3. DfE may order Services under the Framework Agreement by further competition. DfE will invite all Framework Providers appointed to the framework to participate in the further competition unless they are not eligible to be invited to participate or continue to participate in the further competition for a reason set out in **paragraph 4 (Invitation Eligibility)** below. Such invitation (the “**Further Competition Invitation**”) will include:
          1. Details of the Services required (including any phased or optional service requirements);
          2. Timescale for submission of bids;
          3. Timescale for completion of the Services;
          4. Details required to enable the Framework Providers to conduct conflict checks;
          5. Details of any Key Performance Indicator to apply to the Call-Off Contract (in addition to those set out in **Schedule** 13 **(Key Performance Indicators)**;
          6. Details of any Reliance Party it intends to have access to the Deliverables in accordance with **clause 9 (Reliance and Disclosure)** of the Framework Agreement and any other stakeholders who should be subject to a conflict check;
          7. Any other matters considered relevant by DfE
          8. Evaluation criteria and relevant weighting upon which the Call-Off Contract will be awarded. Such evaluation criteria and weightings applicable to each further competition shall be consistent with the following requirements:

Price (with weighting 40%); and

Quality (with weighting 60%) (which may include any one or more of the following sub-criterial topics):

technical proposals to meet the requirement;

team structure/skill allocation proposals to meet the requirement

ability to meet the timescales specified in the Further Competition Invitation

* + - 1. Following a Further Competition Invitation in accordance with this **paragraph 3**, each Framework Provider shall:
         1. Conduct conflict checks in accordance with **clause 7 (Conflicts of Interest)** of the Framework Agreement and notify DfE of the result. Any Framework Provider who is not eligible to continue in the further competition for the reasons outlined in **paragraph 4 (Invitation Eligibility)** below shall be excluded from the further competition.
         2. Provide a bid for the Services within the timescale identified in the invitation (which shall be at least 10 Working Days from the date of the Further Competition Invitation) which may include (without limitation):

a detailed proposal on how the Services would be undertaken by the Framework Provider;

details of which Personnel would be engaged in the delivery of the Services, together with details of any Sub-Contractor who may be engaged in the delivery of the Services;

details of how the Framework Provider would manage the work, including strategy, planning and methods of communication;

the Framework Provider’s timetable for delivering the Services;

details of the Framework Provider’s proposed fixed fee based on, and in no event exceeding, those prices set out in the Charging Matrix at **Schedule 4** , save that DfE may request an alternative fee arrangement as part of a further competition (provided that the fees do not exceed those set out in the Charging Matrix at **Schedule 4** ); and

any other information specifically requested by DfE.

* + - 1. Following the submission of a bid in accordance with this **paragraph 3** DfE may clarify any information provided by the Framework Provider and will select a Framework Provider based on the evaluation criteria set out in the Further Competition Invitation.
    1. **Invitation Eligibility**
       1. For the purpose of this **Schedule 5** a Framework Provider shall not be eligible to be invited to provide Services by rotation or further competition in any of the following circumstances:
          1. if it is unable to commence work on the Services specified in the Engagement on the date or within the period required by DfE for that Engagement;
          2. if there is a Conflict of Interest between the Framework Provider and DfE or any named Reliance Party in relation to the Services;
          3. if it has failed to deliver the results of a conflict check in relation to the Services to which the Engagement relates within the time scales set out in **clause 7.3 (Conflicts of Interest)** of the Framework Agreement;
          4. if the Contractor’s Framework Agreement is subject to suspension in accordance with **clause 30 (Suspension)**.
    2. **Placing of Engagements**
       1. Once the successful Framework Provider has been identified using either the Rota or further competition above, DfE may place an Engagement with the relevant Framework Provider by serving an Engagement Letter in writing in substantially the form set out in **Schedule 7 (Engagement Letter)** or such similar or analogous form agreed with the Framework Providers including systems of ordering involving e-mail or other online solutions.
       2. On receipt of the Engagement Letter, the Contractor shall sign and return the Engagement Letter which shall constitute its offer to DfE. DfE shall signal its acceptance of the Engagement and the formation of a Call-Off Contract by counter-signing the Engagement Letter.

**Annex A – Direct Award Rota List**

|  |  |  |
| --- | --- | --- |
| **Lot** | **Supplier name** | **Rota Postition** |
| 1 | Ernst & Young LLP | 1 |
| 1 | BDO LLP | 2 |
| 1 | Azets Holdings Limited t/a Azets | 3 |
| 1 | Mazars LLP | 4 |
| 1 | Grant Thornton UK LLP | 5 |
| 1 | Deloitte LLP | 6 |
| 1 | KPMG LLP | 7 |
| 1 | FTI Consulting LLP | 8 |
| 1 | FRP Advisory Trading Limited | 9 |

|  |  |  |
| --- | --- | --- |
| **Lot** | **Supplier name** | **Rota Position** |
| 3 | UHY Hacker Young (B'ham) LLP | 1 |
| 3 | Wylie & Bisset LLP | 2 |
| 3 | RSM | 3 |
| 3 | PwC LLP | 4 |
| 3 | Mazars LLP | 5 |
| 3 | KPMG LLP | 6 |

**FRAMEWORK AGREEMENT**



**CALL-OFF TERMS AND CONDITIONS**

**CONTENTS**

[1 DEFINITIONS AND INTERPRETATION 95](#_Toc53672240)

[2 TERM 100](#_Toc53672241)

[3 THE SERVICES 100](#_Toc53672242)

[4 DFE CO-OPERATION 104](#_Toc53672243)

[5 CONFLICTS OF INTEREST 105](#_Toc53672244)

[6 CONSORTIA 105](#_Toc53672245)

[7 TRANSFER AND SUB-CONTRACTING 105](#_Toc53672246)

[8 PERSONNEL 107](#_Toc53672247)

[9 TUPE 108](#_Toc53672248)

[10 CHARGES 111](#_Toc53672249)

[11 TAX AND VAT 114](#_Toc53672250)

[12 INTELLECTUAL PROPERTY 115](#_Toc53672251)

[13 DATA, SYSTEMS HANDLING AND SECURITY 118](#_Toc53672252)

[14 PUBLICITY AND PROMOTION 123](#_Toc53672253)

[15 LIABILITY 123](#_Toc53672254)

[16 WARRANTIES AND REPRESENTATIONS 126](#_Toc53672255)

[17 FORCE MAJEURE 127](#_Toc53672256)

[18 PERFORMANCE MONITORING 128](#_Toc53672257)

[19 TERMINATION 128](#_Toc53672258)

[20 EXIT MANAGEMENT 132](#_Toc53672259)

[21 ENTIRE AGREEMENT 133](#_Toc53672260)

[22 PARTNERSHIP 133](#_Toc53672261)

[23 WAIVER 133](#_Toc53672262)

[24 CHANGE CONTROL 133](#_Toc53672263)

[25 COUNTERPARTS 134](#_Toc53672264)

[26 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 134](#_Toc53672265)

[27 FURTHER ASSURANCE 134](#_Toc53672266)

[28 NOTICES 134](#_Toc53672267)

[29 DISPUTE RESOLUTION 182](#_Toc53672268)

[30 GOVERNING LAW AND JURISDICTION 135](#_Toc53672269)

**Contract Schedules**

1. [CHANGE CONTROL PROCEDURE 136](#_Toc54698618)
2. [DATA, SYSTEMS HANDLING AND SECURITY 139](#_Toc54698619)
3. [COMMERCIALLY SENSITIVE INFORMATION 154](#_Toc54698620)
4. [THE CONTRACTOR’S PROPOSALS 154](#_Toc54698621)
5. [ADDITIONAL CLAUSES 155](#_Toc54698622)
6. [TEMPLATE GUARANTEE 183](#_Toc54698623)

**Call-Off Contract** **terms and conditions**

**Background**

1. The Department for Education ("**DfE**") placed a contract notice 2020/S 218-536579 on 9th November 2020 in the Official Journal of the European Union seeking expressions of interest from potential service Contractors for the provision of the Services to itself and other contracting bodies.
2. Following receipt of expressions of interest, DfE invited potential service Contractors to tender for the provision of the insolvency practitioner Services to support the new insolvency regime for further education and sixth form colleges in England and Wales.
3. On the basis of the Contractor’s tender, DfE selected the Contractor to enter into a framework agreement to provide the Services stated in the Framework Specification to DfE on placing Engagements in accordance with the Framework Agreement.
4. The Framework Agreement sets out the procedure for ordering the Services stated in the Framework Specification, the main terms and conditions for the provision of the Services and the obligations of the Contractor under the Framework Agreement and this Call-Off Contract.
5. Pursuant to an Engagement set out in the Engagement Letter DfE has selected the Contractor to provide the Services stated in the Engagement Letter and the Contractor is willing and able to provide such Services in accordance with the terms and conditions of the Call-Off Contract.
   * 1. DEFINITIONS AND INTERPRETATION
        1. In this Call-Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in **Schedule 1 (Definitions) to the** **Framework Agreement** or the relevant schedule to the Framework Agreement.
        2. In this Call-Off Contract, the following expressions have the following meanings, unless inconsistent with the context:

***Lot 3 only* “Additional Clauses”** means the additional clauses applicable where a Call-Off Contract is entered into by a Contracting Body as set out in **Schedule 5 (Additional Clauses)**;

**“Area”** means the geographical area within England and Wales in respect of which the Contractor is appointed to provide the Services.

**“Call-Off Guarantor”** means [ ];

**“****Change Control Notice”** means the Change Control Notice set out in **Schedule 6** containing details of agreed Variations to the Call-Off Contract.

**“****Charges”** means the fees subject to **clause 11** payable to the Contractor for the provision of the Services calculated in accordance with **Schedule 4 (Charging Matrix) of the Framework Agreement**, and set out in the Engagement Letter.

***Lot 3 only*** **“Contracting Body**” means [the authority party named in the Engagement Letter;

**“Consortium”** means an [association](https://en.wikipedia.org/wiki/Voluntary_association) of 2 or more persons acting together to deliver the Services but excludes Sub-Contractors.

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

1. signed by all the Consortium Members as at the Effective Date; and
2. adhered to by Consortium Members who join the Consortium after the Effective Date by signing a Deed of Adherence

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

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

**“Contractor Background IPR”** means:

1. Intellectual Property Rights owned by the Contractor before the Effective Date, for example those subsisting in the Contractor’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor’s know-how or generic business methodologies; and/or
2. Intellectual Property Rights created by the Contractor independently of this Call-Off Contract.

**“****Contractor’s Proposals”** means the Contractor’s proposal submitted in response to the Engagement Letter.

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

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

**“Deed of Adherence”** means a deed under which a new Consortium Member shall covenant with the other Consortium Members to adhere to the terms of the Consortium Agreement in either the form set out in **Schedule** 9 or in any other form approved by DfE in writing.

**“DfE Security Standards”** means the security standards as set out in **Annex 1 of Schedule 2 (Data, Systems Handling and Security)**.

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

**“****Effective Date”** means the commencement date referred to in the Engagement Letter.

**“Factual Accuracy Letter”** means a letter provided by the Education Provider to the Contractor whereby the Education Provider gives warranties in relation to the factual accuracy of the Contractor’s Deliverables;

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

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

[“**Guarantee**” means the deed of guarantee in favour of DfE entered into by the Call-Off Guarantor on or about the date of this Call-Off Contract (which is in the form set out in **Schedule 6 (Guarantee)**), or any guarantee acceptable to DfE that replaces it from time to time];

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

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

**“Initial Term”** means the period from the Effective Date to **15th April 2023**

**“****IP Materials”** means any materials used or developed for the purposes of the Call-Off Contract including Service Specific IP Materials, any programme materials, guidance, papers and research data, results, contract specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs.

**“****Key Personnel”** means any of the Personnel identified as such in the Engagement Letter or otherwise identified as such by DfE pursuant to **clause 9 (Personnel)**.

**“Key Sub-Contractor”** means any Sub-Contractor identified as such in the Engagement Letter or otherwise identified as such by DfE.

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

1. a substantial portion of the Call-Off Contract; or
2. any of the obligations set out in **clauses 6 (Conflicts of Interests), 12 (Tax and VAT), 13 (Intellectual Property) and 17 (Publicity and Promotion)** and in **Schedule 2.**

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

“**Performance Standards**” means the measures or standards which the Contractor will measured against in respect of the delivery of the Services aligned to defined KPIs.

**“****Personnel”** means all persons employed by the Contractor to perform its obligations under the Call-Off Contract together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Call-Off Contract.

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

**“Returning Employees”** means those persons agreed by the Parties to be employed or engaged by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services.

**“Service Users”** means the Education Providers in relation to whom the Services relate.

**“****Term”** means the period from the Effective Date until the date of expiry of the Call-Off Contract (as set out in the Engagement Letter) or if earlier the date of termination in accordance with these Call-Off Terms and Conditions.

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

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

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

* + - 1. The following notes of construction and interpretation apply to the Call-Off Contract:
         1. references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Call-Off Contract which are in force prior to the date of the Call-Off Contract;
         2. the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
         3. the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context;
         4. the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;
         5. any reference in the Call-Off Contract to a clause or schedule is a reference to a clause or schedule of the Call-Off Contract and references in any schedule to paragraphs relate to the paragraphs in that schedule;
         6. the clause headings are included for convenience only and shall not affect the interpretation of the Call-Off Contract;
         7. the schedules and appendices form part of the Call-Off Contract and shall have effect as if set out in full in the body of the Call-Off Contract and any reference to the Call-Off Contract includes the schedules;
         8. where a standard, policy or document is referred to in this Call-Off Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard policy or document, the Contractor shall notify DfE and the Parties shall update this Call-Off Contract with a reference to the replacement hyperlink; and
         9. if a capitalised expressing does not have an interpretation in this Call-Off Contract, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement it shall, in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise it shall be interpreted in accordance with the dictionary meaning; and
         10. Lot 3 Only: Where a the Call-Off Contract is entered into by a Contracting Body, the Additional Clauses shall apply.

**Due Diligence**

* + - 1. Without prejudice to the requirements of **clause 7 (Conflicts of Interest) of the Framework Agreement**, the Contractor acknowledges that:
         1. DfE has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary tor relevant to its performance under this Call-Off Contract;
         2. it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
         3. it has raised all relevant due diligence questions with DfE before the Effective Date;
         4. it has undertaken all necessary due diligence and has entered into this Call-Off Contract in reliance on its own due diligence alone; and
         5. it shall not be excused from the performance of any of its obligations under this Call-Off Contract on the grounds of, nor shall the Contractor be entitled to recover any additional costs or charges, arising as a result of any:

misinterpretation of the requirements of DfE in this Call-Off Contract, the Engagement Letter and the Framework Specification;

failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or

failure by the Contractor to undertake its own due diligence.

* + 1. TERM
       1. The Call-Off Contract commences on the Effective Date and, subject to any provision of this Call-Off Contract for earlier termination, or extension set out in this **clause 2**, will terminate at the end of the Initial Term.
       2. DfE may extend the Initial Term for such further period as DfE may choose by giving not less than 3 months’ written notice to the Contractor prior to the expiry of the Initial Term.
    2. [GUARANTEE
       1. Save for **clauses 1 (Definitions and Interpretation), 2 (Term), 14 (Confidential Information), 15 (Freedom of Information), 17 (****Publicity and Promotion), 18 (Liability), 19 (Warranties and Representations), 24 (Entire Agreement), 26 (****Waiver), 29 (Contracts (Rights of Third Parties) Act 1999), 31 (****Notices),** and **32 (****Governing Law and Jurisdiction)**, this Call-Off Contract is conditional upon the valid execution and delivery to DfE of the Guarantee by the Call-Off Guarantor (the Condition Precedent). DfE may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Contractor notice in writing.
       2. The Contractor shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Business Days after the date of this Call-Off Contract then, unless the Condition Precedent is waived by DfE in accordance with **clause 3.1**:
          1. this Call-Off Contract shall automatically cease and shall not come into effect; and
          2. neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
       3. The Contractor shall consult with DfE in relation to the steps it takes to satisfy the condition set out in **clause 3.1** and shall keep DfE fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in clause 3.2.
    3. THE SERVICES
       1. The Contractor shall provide the Services in the Area in accordance with the Call-Off Contract Specification and undertake and be responsible for all obligations of the Contractor in respect of the Services.
       2. DfE may appoint other Contractors for the Services in the Area.
       3. The Contractor shall, in performing its obligations under the Call-Off Contract:
          1. conform to and ensure that the Services conform to the requirements of the Framework Agreement, the Call-Off Contract Specification and the Contractor’s Proposals or as otherwise agreed in writing between the Parties;
          2. carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of DfE specified by DfE from time to time;
          3. comply with Good Industry Practice;
          4. ensure that the Services are provided by competent and appropriately trained personnel;
          5. comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
          6. provide the Services in such a way as to meet or exceed the Key Performance Indicators;
          7. in so far as is reasonably practicable, comply with any policies and procedures adopted by DfE from time to time within 14 days of the same being brought to the attention of the Contractor by the DfE;
          8. comply with Law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
          9. comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of DfE, the Service Users and all other persons including members of the public;
          10. comply with all safety, security, acceptable use and other policies of DfE from time to time notified to it and procure that the Personnel also comply;
          11. comply with the timescales and deadlines set out in the Engagement Letter or as required by Law;
          12. at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and supply the Services in accordance with the requirements of this Call-Off Contract and the Framework Agreement;
          13. obtain and maintain throughout the Term of this Call-Off Contract all the consents, approvals, licenses and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary for the provision of the Services;
          14. ensure that the Deliverables are comprehensive, accurate and prepared in accordance with Good Industry Practice; and
          15. provide DfE with such assistance as they may reasonably require during the Term in respect of the supply of the Services.
       4. An obligation on the Contractor to do, or to refrain from doing any act or thing shall include an obligation upon the Contractor to procure that all Sub-Contractors and Personnel also do or refrain from doing such act or thing.
       5. The Contractor shall continue to perform all of its obligations under this Call-Off Contract and shall not suspend the provision of the Services notwithstanding any dispute or failure to pay the Charges.
       6. The Contractor shall take reasonable care to ensure that in the performance of this obligations under this Call-Off Contract it does not disrupt the operations of DfE or any Service User.
       7. All equipment and other property brought onto the Premises shall be at the Contractor’s own risk and neither DfE nor the Service User shall have any liability for any loss of or damage to any such equipment and property unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence of DfE or the Service User.
       8. Any land or Premises made available from time to time to the Contractor by DfE or a Service User in connection with the Call-Off Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Call-Off Contract. The Contractor shall have the use of such land or Premises as a licensee and shall vacate the same on completion, termination or abandonment of the Call-Off Contract or the task in respect of which such land or Premises was made available.
       9. The Call-Off Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or any of the Personnel and no such tenancy has or shall come into being and, notwithstanding any rights pursuant to the Call-Off Contract, DfE or the Service User (as the case may be) retains the right at any time to use any Premises in any manner.
       10. The Parties agree that to the extent that there is any conflict or ambiguity between the Contractor’s duties under the Call-Off Contract and those it owes under the applicable insolvency legislation (the Insolvency Act 1986, The Insolvency (England and Wales) Rules 2016, the Technical and Further Education Act 2017 and The Education Administration Rules 2018), the responsibilities under the legislation will prevail.  In particular, but without limitation,:
           1. under Clause 6 of the Call-Off Contract a Contractor shall be permitted to enter into Sub-Contracts in the furtherance of its statutory duties under the legislation without prior recourse to DfE;
           2. under Clause 7 of the Call-Off Contract, DfE’s ability to remove Personnel shall be limited so as not to allow it to remove administrators duly appointed under the legislation;
           3. DfE shall not use its contractual rights under a Call-Off Contract in order to enhance the priority of any existing or future losses or expenses incurred by it either under a funding arrangement or as a creditor of an further education college in administration.
       11. The Parties agree and acknowledge that DfE shall not in giving any instructions to the Contractor require the Contractor to do anything that would put the Contractor in breach of its duties under any applicable insolvency legislation (the Insolvency Act 1986, The Insolvency (England and Wales) Rules 2016, the Technical and Further Education Act 2017 and The Education Administration Rules 2018) or other applicable Law.
    4. DFE CO-OPERATION
       1. DfE shall use reasonable endeavours to provide data and materials to the Contractor and access to systems for the purposes of providing the Services that the Contractor may use but only to the extent necessary to enable the Contractor to provide the Services.
       2. The Parties agree and acknowledge that the Contractor may require access to certain data, information and materials from a Service User (the “**Service User Data**”) in order to provide the Services and that the Contractor shall take all reasonable steps in order to obtain such Service User Data. The Contractor shall obtain a Factual Accuracy Letter from a Service User in respect of any Service User Data, and the Contractor shall provide a copy of such Factual Accuracy Letter to DfE as soon as reasonably practicable following the Effective Date.
       3. DfE shall provide reasonable assistance to the Contractor in obtaining Service User Data provided that the Contractor shall:
          1. used all reasonable endeavours to obtain such Service User Data;
          2. promptly notify DfE in the event that is prevented from obtaining such Service User Data due to events outside of its control; and
          3. take all reasonable steps to mitigate the impact of any such failure to obtain Service User Data on the provision of the Services in accordance with the requirements of the Engagement Letter.
       4. Where having taken all the steps in **clause 5.3** above, the Contractor considers that its delivery of the Services is likely to be delayed by the failure of a Service User to provide Service User Data, the Contractor may request a reasonable extension of time for the delivery of such Services reflecting the delay in obtaining Service User Data and DfE shall not unreasonably without its consent to any such request.
    5. CONFLICTS OF INTEREST
       1. The Contractor warrants and represents to DfE that it has performed appropriate conflict checks in accordance with Good Industry Practice prior to entering into the Call-Off Contract and that at the Effective Date there are no conflicts of interest that would prohibit or otherwise impair the objectivity of the Contractor in its performance of its performance of its obligations under this Call Off Contract.
       2. The Contractor shall comply with its obligations under clause 7 of the Framework Agreement (Conflicts of Interest) in connection with the notification and management of any conflicts during the Term of this Call-Off Contract.
    6. CONSORTIA
       1. If the Contractor is a Consortium it shall comply with the terms of this **clause 7 (Consortia)**.
       2. The Contractor may appoint additional or replacement Consortium Members to assist it in carrying out its obligations under the Call-Off Contract subject to compliance with **clause 7.3.**
       3. No new person or entity may become a Consortium Member until:
          1. DfE has given its prior written consent to the new Consortium Member;
          2. the new Consortium Member has signed a Deed of Adherence; and
          3. a copy of the Deed of Adherence has been given to DfE.
       4. The Contractor shall promptly inform DfE if and how any Consortium Member breaches the terms of the Consortium Agreement.
    7. TRANSFER AND SUB-CONTRACTING
       1. Save as set out in this **clause 8 (Transfer and Sub-Contracting)** the Contractor may not sub-contract, assign, transfer, charge the benefit and/or delegate the burden of the whole or any part of the Call-Off Contract (a “**Transfer**”) without the prior written consent of DfE. ***Lot 1 Only***: The parties agree and acknowledge that the appointment of an Insolvency Practitioner (as described in the Framework Specification) is a personal appointment, and therefore, the Contractor may not sub-contract any functions as an Insolvency Practioner once appointed under an Engagement Letter.
       2. If DfE consents to a Transfer the Contractor will evidence the Transfer in writing and provide a copy of the Transfer document on request.
       3. The Contractor may award Sub-Contracts with a value per annum not exceeding £10,000 without DfE’s consent.
       4. Where DfE has consented to the placing of Sub-Contracts, the Contractor shall:
          1. notify DfE the name(s), contact details and legal representatives of the Sub-Contractor(s) and copies of each Sub-Contract shall, at the request of DfE, be sent by the Contractor to DfE promptly on request.
          2. ensure that any terms included in a Sub-Contract shall include obligations no less onerous that those imposed on the Contractor in the Framework Agreement this Call-Off Contract in respect of:

data protection requirements as set out in **Clause 20 (Data Protection) of the Framework Agreement**;

FOIA requirements set out in **Clause 18 (Freedom of Information) of the Framework Agreement**;

conduct of audits as set out in **Clause 23 (Record Keeping and Audit) of the Framework Agreement**;

Conflicts and Reliance as set out in **Clauses 7 (Conflicts of Interest)** and **9 (Reliance and Disclosure) of the Framework Agreeme**nt;

IPR provisions materially consistent with **Clause 22 (Intellectual Property Rights) of the Framework Agreement**;

a provision under CRTPA for DfE to enforce any provision which are capable of conferring a benefit on DfE; and

a restriction on further sub-contracting without the consent of DfE;

* + - * 1. pay any undisputed invoices due from it to a Sub-Contractor within 30 days of verifying that the invoice is valued and undisputed;
        2. at all times remain responsible for all acts and omissions of its Sub-Contractors as if they were its own; and
        3. not terminate or materially amend the terms of any Sub-Contract without DfE's prior written consent.
      1. DfE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to DfE’s right of termination pursuant to **clause 22 (Termination)** unless the Sub-Contractor can remedy the breach to DfE’s satisfaction within 21 days of receipt by the Contractor of written notice from DfE requiring the Sub-Contract to be terminated.
      2. If DfE believes there are:
         1. compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
         2. non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, DfE may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.
      3. In addition to any other management information requirements set out in this Call-Off Contract, the Contractor agrees and acknowledges that it shall, on request and at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to DfE including:
         1. the total contract revenue received directly on this contract;
         2. the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
         3. the total value of sub-contracted revenues to SMEs and VCSEs.
    1. PERSONNEL
       1. The Contractor shall use its reasonable endeavours to ensure continuity of Personnel and to ensure that the turnover rate of Personnel is at least as good as the prevailing industry norm for similar services, locations and environments.
       2. The Contractor shall ensure that no person who discloses a Relevant Conviction or who is found to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service Procedures or otherwise), is employed or engaged in providing the Services without DfE's prior written consent.
       3. For each of the Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom DfE owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the Contractor shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.
       4. The Contractor acknowledges that Key Personnel and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Personnel and Key Sub-Contractors listed in the Engagement Letter as at the Effective Date.
       5. Key Personnel shall not be released from supplying the Services without DfE’s consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
       6. Any replacements of Key Personnel shall be subject to DfE consent and shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
       7. DfE shall not unreasonably withhold consent under **clauses 9.5** or **9.6 (Personnel)**. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Personnel or Key Sub-Contractors.
       8. DfE may require the Contractor to remove any Key Personnel who DfE considers in any respect unsatisfactory.
       9. DfE shall not be liable for the cost of replacing any Key Personnel.
       10. Except in respect of any transfer of staff under TUPE, for the Term and for 12 months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any staff of the other Party who have been engaged in providing the Services or the management of the Call-Off Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at staff of the other Party.
    2. TUPE
       1. The Parties agree that it is their understanding that no employees will transfer to the Contractor or a Sub-Contractor pursuant to TUPE on the Effective Date.
       2. In the event that any employees do transfer to the Contractor or Sub-Contractor pursuant to TUPE on the Effective Date the Contractor shall (and shall procure that its Sub-Contractor shall) with effect from and including the Effective Date assume and discharge all obligations and liabilities in respect of such employees.
       3. The Contractor will indemnify DfE and keep DfE indemnified in full from and against all costs, claims, liabilities, expenses or demands (including all legal costs) whether direct, indirect or consequential awarded against or incurred or paid by DfE as a result of or in connection with any claims arising from any act, fault or omission of the Contractor or its Sub-Contractor(s) in connection with any employees who transfer to the Contractor or its Sub-Contractor on the Effective Date.
       4. No later than 6 Months prior to the end of the Term, or within 30 days of notice of termination being given by either Party pursuant to clause 22.6 (Termination) or at any time within 30 days of receipt of a written request from the DfE, the Contractor shall fully and accurately disclose to DfE, all information that DfE may reasonably request in relation to the Personnel including (but not limited to) the following:
          1. the total number of Personnel;
          2. the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Personnel referred to in **clause 10.4.1 (TUPE)**;
          3. the terms and conditions of employment/engagement of the Personnel referred to in **clause 10.4.1 (TUPE)**, their job titles and qualifications;
          4. details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
          5. details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union

(together the “TUPE Information”).

* + - 1. At intervals determined by DfE (which shall not be more frequent than once every 30 days) the Contractor shall give DfE updated TUPE Information.
      2. Each time the Contractor supplies TUPE Information to DfE it shall warrant its completeness and accuracy and DfE may assign the benefit of this warranty to any Replacement Contractor.
      3. DfE may use TUPE Information for the purposes of any retendering process.
      4. If TUPE applies to the transfer of the Services on termination of the Call-Off Contract, the Contractor shall indemnify and keep indemnified DfE, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:
         1. the provision of TUPE Information;
         2. any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;
         3. any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of DfE or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
         4. any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
         5. any claim by any person who is transferred by the Contractor to DfE and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
      5. If the Contractor becomes aware that the TUPE Information it provided has become inaccurate or misleading, it shall promptly notify DfE and provide DfE with up to date TUPE Information.
      6. This **clause 10** applies during the Term and indefinitely thereafter.
      7. The Contractor undertakes to DfE that, during the 12 Months prior to the end of the Term the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of DfE (such approval not to be unreasonably withheld or delayed):
         1. amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or Variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or Variation is not in any way related to the transfer of the Services);
         2. terminate or give notice to terminate the employment or engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
         3. transfer away, remove, reduce or vary the involvement of any Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual’s career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or Variation is not in any way related to the transfer of the Services); or
         4. recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.
    1. CHARGES
       1. Except where otherwise expressly stated in the Call-Off Contract the only payments to be paid by DfE for the performance by the Contractor of its obligations under the Call-Off Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
       2. The Contractor shall be entitled to invoice the Charges following completion of the Services to the reasonable satisfaction of DfE (or in accordance with any payment profile agreement between the parties in an Engagement Letter).
       3. In consideration for the provision of the Services DfE shall pay the Charges as set out in the Engagement Letter subject to the receipt of correct invoices pursuant to **clause 11.7** being issued by the Contractor in accordance with this **clause 11**.
       4. Save where provided otherwise in **clause 11.5**, the Charges for this Call-Off Contract shall be fixed for the Term and the Contractor shall not be entitled to increase the Charges throughout the Term.
       5. In the event that the Contractor can demonstrate to DfE that the scope of the Services required under this Call-Off Contract exceed or are likely to exceed the scope of Services set out in the Call-Off Contract Specification, either for reasons beyond the reasonable control of the Contractor, or because DfE have requested the Contractor to perform additional Services, then:
          1. the Contractor shall promptly (and in any case prior to commencing any activity which exceed the scope of Services set out in the Call-Off Contract Specification) notify DfE of the nature of the additional Services required;
          2. the Contractor may seek to agree additional Charges with DfE (provided that such additional Charges are calculated in accordance with **Schedule 4 (Charging Matrix) of the Framework Agreement**), and are agreed with DfE in writing prior to the commencement of out of scope activity; and
          3. DfE shall not be liable to pay any additional Charges if and to the extent that they are not agreed in accordance with this **clause 11.5**.
       6. The Charges are exclusive of Value Added Tax (**“****VAT”**) and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Call-Off Contract (unless expressly stated otherwise in the Call-Off Contract). The Contractor should notify DfE of any direct VAT charges for the delivery of the Call-Off Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
       7. Payment of the Charges by DfE shall be without prejudice to any rights DfE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Call-Off Contract and any breach by the Contractor of the Call-Off Contract shall not be deemed to be accepted or waived by DfE by reason of such payment.
       8. DfE may deduct from or offset against any monies due or becoming due to the Contractor under the Call-Off Contract (including the Charges) any monies due from the Contractor under the Call-Off Contract or otherwise under any other agreement or account whatsoever.
       9. Invoices shall be sent, within 30 days of the end of the relevant invoicing date, to Department for Education PO Box 407 SSCL Phoenix House, Celtic Springs Bus. Park Newport NP10 8FZ. An invoice is a **“Valid Invoice”** if it is legible and includes:
          1. the date of the invoice;
          2. Contractor’s full name and address;
          3. Call-Off Contract reference number;
          4. the charging period;
          5. a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
          6. days and times worked (if applicable);
          7. Service Credits (if applicable); and
          8. VAT if applicable.
       10. DfE shall not pay an invoice which is not a Valid Invoice.
       11. DfE intends to pay Valid Invoices within 10 days of receipt. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause 11.11 is a substantial remedy for late payment of any sum payable under the Call-Off Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
       12. DfE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
       13. At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to DfE. The final invoice shall be submitted not later than 30 days after the end of the Term.
       14. DfE shall not be obliged to pay the final invoice until all Services and Deliverables have been delivered to the reasonable satisfaction of DfE.
       15. The Contractor shall ensure that a term is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
       16. If DfE disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within 10 Business Days notify the Contractor of the reasons for disputing the invoice. DfE may withhold the disputed amount pending resolution of the dispute.
       17. The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with **clause 42** of the Framework Agreement **(Dispute Resolution)**.
    2. TAX AND VAT
       1. Where the Contractor is liable to be taxed in the UK in respect of consideration received under the Call-Off Contract it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
       2. If the Services are liable for VAT the Contractor shall comply with HMRC rules and regulations. The Contractor will be liable for paying to HMRC any identified VAT including those which may fall due.
       3. If the Contractor is liable to NICs in respect of consideration received under the Call-Off Contract it shall comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
       4. DfE may ask the Contractor to provide information which demonstrates how the Contractor complies with **clauses 12.1** to **12.3** or why those clauses do not apply to it.
       5. A request under **clause 12.4** may specify the information which the Contractor must provide and the period within which that information must be provided.
       6. DfE may terminate this Call-Off Contract if:
          1. in the case of a request mentioned in **clause 10.4 (TUPE)** the Contractor:
          2. fails to provide information in response to the request within a reasonable time; or
          3. provides information which does not demonstrate either how the Contractor complies with **clauses 12.1** to **12.3** or why those clauses do not apply to it;
          4. it receives information which demonstrates that, if **clauses 12.1** to **12.3** apply, the Contractor is not complying with those clauses.
       7. DfE may supply any information which it receives under **clause 12.4** to HMRC.
       8. The Contractor bears sole responsibility for the payment of tax and national insurance contributions due from it in relation to any payments or arrangements made under the Call-Off Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Call-Off Contract.
       9. The Contractor will account to the appropriate authorities for any applicable income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under the Call-Off Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Call-Off Contract. The Contractor shall indemnify DfE against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the Contractor of its obligations under the Call-Off Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by DfE in connection with any such assessment or claim.
       10. The Contractor authorises DfE to provide HMRC and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under the Call-Off Contract whether or not DfE is obliged as a matter of law to comply with such request.
       11. If, during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
           1. notify DfE in writing of such fact within five (5) Business Days of its occurrence; and
           2. promptly give DfE:

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

such other information in relation to the Occasion of Tax Non-Compliance as DfE may reasonably require.

* + 1. INTELLECTUAL PROPERTY
       1. All Intellectual Property Rights in materials:
          1. furnished to or made available to the Contractor by or on behalf of DfE (the **“****DfE IP Materials”**) shall remain the property of DfE (save for Copyright and Database Rights which shall remain the property of the Crown);
          2. furnished to or made available to the Contractor by or on behalf of any Education Provider (the “**EP IP Materials**”) shall remain the property of the Education Provider; and
          3. prepared by or for the Contractor on behalf of DfE in connection with the Call-Off Contract, which shall not include Deliverables in draft form, (the **"Service Specific IP Materials****"**) shall vest in DfE (save for Copyright and Database Rights which shall vest in the Crown).
       2. Save as expressly granted elsewhere under the Call-Off Contract, DfE shall not acquire any right, title or interest in the Contractor Background IPRs.
       3. The Contractor shall not, and shall ensure that Personnel shall not, use or disclose any DfE IP Materials without DfE’s approval save to the extent necessary for the performance by the Contractor of its obligations under the Call-Off Contract.
       4. The Contractor hereby assigns to DfE or undertakes to procure the assignment to DfE of all Intellectual Property Rights which may subsist in the Service Specific IP Materials (save for Copyright and Database Rights which it hereby assigns to the Crown or undertakes to procure the assignment of to the Crown). These assignments shall be given with full title guarantee, shall take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service Specific IP Materials and shall include, without limitation, an assignment to DfE (or the Crown as appropriate) of all rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Contractor shall execute all documents and do all other acts requested by DfE and necessary to execute and perfect these assignments and to otherwise evidence DfE’s or the Crown’s ownership of such rights.
       5. The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright produced by or in connection with the Call-Off Contract or the performance of the Call-Off Contract.
       6. The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to DfE (a Reliance Party and/or a Replacement Contractor at the request of DfE) a non-exclusive licence or, if itself a licensee of those rights, shall grant to DfE (a Reliance Party and/or a Replacement Contractor at the request of DfE) an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for DfE to sub-licence, transfer, novate or assign to a Replacement Contractor. The Contractor shall notify DfE of any third party Intellectual Property Rights to be used in connection with the Call-Off Contract prior to their use in connection with the Call-Off Contract or the creation or development of the Service Specific IP Materials.
       7. The Contractor shall at all times, during and after the Term, on written demand indemnify DfE and each other Indemnified Person, and keep DfE and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
       8. If an IPRs Claim is made, or the Contractor anticipates that an IPRs Claim might be made, the Contractor may, at its own expense and sole option, either:
          1. procure for DfE or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
          2. replace or modify the relevant item with non-infringing substitutes provided that:

the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

the replaced or modified item does not have an adverse effect on any other services;

there is no additional cost to DfE or relevant Indemnified Person (as the case may be);

the terms and conditions of this Call-Off Contract shall apply to the replaced or modified Services;

* + - 1. If the Contractor elects to procure a licence in accordance with **clause 13.8.2.1** or to modify or replace an item pursuant to **clause 13.8.2.2**, but this has not avoided or resolved the IPRs Claim, then:
         1. DfE may terminate this Call-Off Contract (if subsisting) with immediate effect by written notice to the Contractor; and
         2. without prejudice to the indemnity set out in **clause 13.7**, the Contractor shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.
      2. The Contractor grants to DfE and, if requested by DfE, to a Replacement Contractor or a Reliance Party, a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights the Contractor owned or developed prior to the Effective Date or otherwise not in connection with the Call-Off Contract (**“Contractor IP”**) and which DfE (or a Replacement Contractor or Reliance Party) reasonably requires in order to exercise its rights and take the benefit of the Call-Off Contract including the Services provided and the use and further development of the IP Materials (in the case of a Reliance Party in accordance with the Reliance Letter).
      3. DfE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.
      4. If the Contractor is not able to grant to DfE a licence to use any Contractor IP for any reason, including due to any Intellectual Property Rights that a third party may have in such Contractor IP, the Contractor shall use its reasonable endeavours to:
         1. procure that the third party owner of any Intellectual Property Rights that are or that may be used to perform the Call-Off Contract grants to DfE a licence on the terms set out in **clause 13.10**; or
         2. if the Contractor is itself a licensee of those rights and is able to do so under the terms of its licence, grant to DfE a sub-licence on the terms set out in **clause 13.14**.
      5. The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are or are to be DfE IP Materials any act or thing which:
         1. would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry; or
         2. would or might prejudice the right or title of DfE to any of DfE IP Materials.
      6. The Contractor shall not use DfE’s branding unless it obtains DfE’s prior consent.
      7. When using DfE Trade Marks the Contractor shall observe all reasonable directions given by DfE from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:
         1. adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any DfE Trade Mark, or unfairly competes with any DfE Trade Mark; or
         2. apply anywhere in the world to register any trade marks identical to or so nearly resembling any DfE Trade Mark as to be likely to deceive or cause confusion.
    1. CONFIDENTIAL INFORMATION
       1. Except to the extent set out in this clause, the Contractor shall treat all Confidential Information supplied by, concerning, belonging or relating to DfE as confidential and in accordance with the HMG Security Policy Framework and shall not disclose any such Confidential Information to any other person without the prior written consent of DfE, except to such persons and to such extent as may be necessary for the performance of the Contractor’s obligations under the Call-Off Contract.
       2. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Call-Off Contract, DfE shall treat all Confidential Information of the Contractor as confidential and shall not disclose any such Confidential Information to the Contractor to any other person without the prior written consent of the Contractor, except to such persons and to such extent as may be necessary for the performance of DfE’s obligations under the Call-Off Contract.
       3. Where required by DfE, the Contractor shall ensure that Sub-Contractors, professional advisors and consultants sign a non-disclosure agreement in substantially the form attached in **Schedule 11 (Non-Disclosure Agreement)** of the Framework Agreement prior to commencing any work in connection with the Call-Off Contract. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this **clause 14.3**. Where requested by DfE, the Contractor shall provide DfE with a copy of the list and, subsequently upon request by DfE, copies of such of the listed non-disclosure agreements as required by DfE. The Contractor shall ensure that its Personnel, Sub-Contractors, professional advisors and consultants are aware of the Contractor’s confidentiality obligations under the Call-Off Contract.
       4. The Contractor may only disclose DfE's Confidential Information to the Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Personnel are aware of and shall comply with these obligations as to confidentiality, including but not limited to the HMG Security Policy Framework.
       5. The Contractor shall not, and shall procure that the Personnel do not, use any of DfE's Confidential Information received otherwise than for the purposes of the Call-Off Contract.
       6. **Clause 14.1** and **14.2** shall not apply to the extent that:
          1. such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
          2. the Contractor is required to make such disclosure to a Regulatory Body within the context of an inspection;
          3. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
          4. such information was obtained from a third party without obligation of confidentiality;
          5. such information was already in the public domain at the time of disclosure otherwise than by a breach of the Call-Off Contract; or
          6. it is independently developed without access to the other party's Confidential Information.
       7. Nothing in **clauses 14.1** and **14.2** shall prevent DfE disclosing any Confidential Information obtained from the Contractor:
          1. for the purpose of the examination and certification of the Contractor’s accounts; or
          2. for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contractor has used its resources; or
          3. to any government department, Crown Body and the Contractor hereby acknowledges that all government departments, Crown Body or contracting authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments, Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, Crown Body; or
          4. to any Reliance Party to the extent that any such Confidential Information is included in any Deliverables accessed by the Reliance Party and subject to the terms of any Reliance Letter; or
          5. to any consultant, Contractor or other person engaged by DfE, provided that in disclosing information under **sub-clauses 14.7.3** and **14.7.5** DfE discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
       8. Nothing in **clauses 14.1** to **14.2** shall prevent DfE or the Contractor from using any techniques, ideas or Know-How gained during the performance of its obligations under the Framework Agreement in the course of its normal business, to the extent that this does not result in a disclosure of the other party’s Confidential Information or an infringement of the other party’s Intellectual Property Rights.
       9. DfE shall use all reasonable endeavours to ensure that any government department, Crown Body, employee, third party or Sub-Contractor to whom the Contractor’s Confidential Information is disclosed pursuant to this **clause 14 (Confidential Information)** is made aware of DfE's obligations of confidentiality.
       10. DfE reserves the right to terminate or suspend the Call-Off Contract in the event that the Contractor or its Personnel fail to comply with this **clause 14 (Confidential Information)**. A suspension notice given to a Contractor pursuant to this clause must specify the period of suspension.
       11. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services under the Call-Off Contract, the Contractor undertakes to maintain adequate and proportionate security arrangements that meet the requirements of professional standards and best practice and requirements of the HMG Security Policy Framework.
       12. The Contractor will immediately notify DfE of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services under a Call-Off Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor’s obligations under **clauses 14.1** to **14.5**. The Contractor will co-operate with DfE in any investigation that DfE considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
       13. The Contractor shall, at its own expense, alter any security systems at any time for the duration of the Call-Off Contract at DfE’s request if DfE reasonably believes the Contractor has failed to comply with **clause 14.11**.
       14. Subject to **clause 32.2** of the Framework Agreement (Recovery Upon Termination), Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to DfE and notified to DfE, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
       15. In the event that the Contractor fails to comply with any of the provisions in **clause 14 (Confidential Information)**, the Contractor agrees that monetary damages would not be a sufficient remedy for breach and that DfE shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of the obligations in **clause 14 (Confidential Information)**.
       16. The Contractor hereby gives its consent for DfE to publish the whole of this Call-Off Contract (subject to the application of any redactions which DfE considers appropriate applying the principles for withholding disclosure set out in **clause 15.3 (Freedom of Information)** and removing Commercially Sensitive Information) including from time to time agreed changes to the Framework Agreement, to the general public. Provided that DfE shall prior to publication consult with the Contractor on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
    2. FREEDOM OF INFORMATION
       1. The Contractor acknowledges that DfE is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with DfE to enable DfE to comply with its Information disclosure obligations.
       2. The Contractor shall and shall procure that any Sub-Contractor shall transfer to DfE all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information:
       3. provide DfE with a copy of all Information in its possession or power in the form that DfE requires within five (5) Business Days (or such other period as DfE may specify) of DfE's request; and
       4. provide all necessary assistance as reasonably requested by DfE to enable DfE to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA and/or regulation 5 of the Environmental Information Regulations.
       5. DfE shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.
       6. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by DfE.
       7. The Contractor acknowledges that (notwithstanding the provisions of clause 14 (Confidential Information) DfE may be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:
          1. without consulting the Contractor; or
          2. following consultation with the Contractor and having taken its views into account;

provided always that DfE shall, in accordance with any recommendations of the codes of practice under the FOIA or the Environmental Information Regulations, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

* + - 1. The Contractor shall ensure that all Information is retained for disclosure and shall permit DfE to inspect such records as requested from time to time.
      2. The Contractor acknowledges that identifying Information as being Commercially Sensitive Information is of indicative value only and that DfE may be obliged to disclose it in accordance with this clause 15 (Freedom of Information).
      3. DfE shall not be liable for any loss, damage, harm or other detriment suffered by the Contractor arising from the disclosure of any Information falling within the scope of the FOIA and/or the Environmental Information Regulations (including Commercially Sensitive Information).
    1. DATA, SYSTEMS HANDLING AND SECURITY
       1. The Parties shall comply with the provisions of **Schedule 2 (Data, Systems Handling and Security)**.
    2. PUBLICITY AND PROMOTION
       1. Subject to **clause 18.2 (Liability)**, without prejudice to DfE’s obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Call-Off Contract or any part thereof in any way, except with the written consent of the other Party.
       2. Without prejudice to the generality of **clauses 13.15 (Intellectual Property)** and **17.1 (Publicity and Promotion)**, the Contractor shall not itself, and shall procure that Consortium Members shall not, use DfE’s name, brand or DfE Trade Marks or the Personal Data of DfE to sell, promote, market or publicise the Contractor’s other programmes, courses, services or other activities.
       3. Subject to **clauses 13 (Intellectual Property)** and**clause 18 (Confidential Information)** of the Framework Agreement, DfE may disclose, copy and otherwise distribute to the public, including but not limited to, by way of the Open Government Licence, any information arising out of the Services or comprised in any work relating to the Services.
    3. LIABILITY
       1. Neither Party excludes or limits its liability (if any) to the other:
          1. for personal injury or death resulting from the its negligence;
          2. under section 2(3) Consumer Protection Act 1987;
          3. for its own fraud; or
          4. for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.
       2. Subject to **clauses 18.1, 18.3, 18.4, 18.5** and **18.6** the Contractor shall indemnify DfE and keep DfE indemnified fully against all Losses, arising out of or in connection with any claim brought or made by a third party against DfE as a result of the Contractor’s breach of the Call-Off Contract or any negligence of the Contractor in performing the Services.
       3. The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in **clauses 10.8 (TUPE), 13 (****Intellectual Property),** and **12 (****Tax).**
       4. Subject to **clauses 18.1** and **18.3** neither Party shall have any liability to the other under or in connection with the Call-Off Contract, whether in contract, tort (including negligence) or otherwise:
          1. for any losses of an indirect or consequential nature;
          2. for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential).
       5. The Contractor’s aggregate liability in respect of any breach of **clause 16 (Data, Systems Handling and Security)** or **Schedule 2 (****Data,** **Systems Handling and Security)** or a breach of the Data Protection Legislation that is caused by default of the Contractor occurring in each and any Contract Year shall in no event exceed ten million pounds (£10,000,000.00).
       6. Subject to **clauses 18.1** and **18.3**, the maximum liability of either Party to the other under the Call-Off Contract (other than in relation to the Contractor’s liability surrounding its data protection obligations, which shall be limited in accordance with the cap set out in **clause 18.5**), whether in contract, tort (including negligence), is limited in each calendar year in aggregate to one million pounds (£1,000,000.00) or three (3) times the value of the Charges payable in that year (whichever is greater).
       7. Save as expressly provided above, the parties agree that the Deliverables nor any Services provided under any Call-Off Contract are intended, either expressly or by implication to confer any benefit on any third party other than a Reliance Party and each party’s liability to any such third party is expressly disclaimed.
       8. Subject to **clause 18.5** and **18.6**, DfE may recover from the Contractor the following losses incurred by DfE to the extent they arise as a result of a Default by the Contractor:
          1. any additional operational and/or administrative costs and expenses incurred by DfE, including costs relating to time spent by or on behalf of DfE in dealing with the consequences of the default;
          2. any wasted expenditure or charges;
          3. the additional costs of procuring a Replacement Contractor for the remainder of the Call-Off Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Call-Off Contract;
          4. any compensation or interest paid to a third party by DfE; and
          5. any fine or penalty incurred by DfE and any costs incurred by DfE in defending any proceedings which result in such a fine or penalty unless such Default arises as a result of negligence or negligent statement or criminal or illegal acts or omissions in which case **clause 18.8** shall not apply.
       9. Except as otherwise expressly provided by the Call-Off Contract, all remedies available to either Party for breach of the Call-Off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
       10. All property of the Contractor whilst on DfE's premises shall be there at the risk of the Contractor and DfE shall accept no liability for any loss or damage howsoever occurring to it.
       11. The Contractor shall effect and maintain in force with a reputable insurance company insurance cover for:
           1. employer’s liability and public liability insurances for the sum and range of cover as DfE deems to be appropriate but not less than £5,000,000 for any one claim,
           2. professional indemnity insurances for the sum and range of cover as DfE deems to be appropriate but not less than £1,000,000 or three (3) times the value of this call off contract, whichever is greater for any one claim and
           3. the liability of the Contractor under the Call-Off Contract.

Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.

* + - 1. The Contractor shall supply to DfE on demand copies of the insurance policies maintained under **clause 18.8**.
      2. The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Call-Off Contract.
      3. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Call-Off Contract.
    1. WARRANTIES AND REPRESENTATIONS
       1. The Contractor warrants and represents that:
          1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Call-Off Contract and that the Call-Off Contract is executed by a duly authorised representative of the Contractor;
          2. in entering the Call-Off Contract it has not committed any fraud;
          3. as at the Effective Date, all information contained in the Contractor’s Proposals remains true, accurate and not misleading, save as may have been specifically disclosed in writing to DfE prior to execution of the Call-Off Contract;
          4. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Call-Off Contract;
          5. it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Call-Off Contract;
          6. the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party’s work or materials provided that this **clause 19.1.6** shall not apply to any IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and
          7. the use by DfE of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Call-Off Contract will not infringe or conflict with the rights of any third party;
          8. in the 3 years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:

it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Call-Off Contract;

* + - * 1. it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Call-Off Contract; and
        2. it has notified DfE in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.
    1. FORCE MAJEURE
       1. If either Party is prevented or delayed in the performance of any of its obligations under the Call-Off Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to **clause 20.3** and **20.4** have no liability in respect of the performance of such of its obligations to the extent that they are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
       2. If either Party is prevented from performance of its obligations for a continuous period in excess of 3 months, the other Party may terminate the Call-Off Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
       3. The Party claiming to be prevented or delayed in the performance of any of its obligations under the Call-Off Contract by reason of Force Majeure shall not be entitled to claim relief under this **clause 20** to the extent that consequences of the relevant Force Majeure event:
          1. are capable of being mitigated by ay of the Services including by the implementation of the Business Continuity and Disaster Recovery Plan under the Framework Agreement;
          2. should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services operating to the standards required by this Call-Off Contract and the Framework Agreement.
       4. The parties shall at all times following the occurrence of an event of Force Majeure use their respective reasonable endeavours to prevent and mitigate the effect of the event of Force Majeure. Where the Contractor is the affected party it shall take all steps in accordance with Good Industry Practice to end Force Majeure or to find solutions by which the Call-Off Contract may be performed despite the Force Majeure.
    2. PERFORMANCE MONITORING
       1. Subject to **clause 21.2**, without prejudice to any other right or remedy of DfE, DfE or its authorised representatives may visit on reasonable notice to the Contractor any premises of the Contractor, any Consortium Member or any other premises at which the Services (or any part of them) are being or are to be performed to ascertain that the Contractor is conforming in all respects with its obligations arising under the Call-Off Contract and otherwise to monitor and quality assure the provision of the Services. In the event that any such visit reveals any default, failure to meet KPIs or other degradation in quality of the Services or Deliverables, DfE may require the Contractor to follow the Rectification Plan Process under the Framework Agreement.
       2. Where DfE notifies the Contractor of its intention to access the Contractor’s premises in order to carry out monitoring in accordance with **clause 21.1** above, DfE will comply with any reasonable instructions of the Contractor in order to reasonably protect the confidential information of any third party client of the Contractor.
    3. TERMINATION
       1. Termination on insolvency
          1. DfE may terminate this Call-Off Contract by written notice to the Contractor with immediate effect where an Insolvency Event affecting the Contractor occurs.
       2. Termination on change of control
          1. The Contractor shall notify DfE immediately in writing and as soon as the Contractor is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
          2. The Contractor shall ensure that any notification made pursuant to **clause 22.2.1** shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
          3. DfE may terminate this Call-Off Contract by written notice to the Contractor with immediate effect under **clause 22.2** to the Contractor within six (6) Months of:

being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or

where no notification has been made, the date that DfE becomes aware that a Change of Control is anticipated or is in contemplation or has occurred, but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

* + - 1. DfE may terminate the Call-Off Contract by written notice to the Contractor with immediate effect if:
         1. the Contractor commits a material breach and:

the Contractor has not remedied the material breach to the satisfaction of DfE within 20 Business Days or such other period as may be specified by DfE after issue of the written notice specifying the material breach and requesting it to be remedied; or

the material breach is not, in the reasonable opinion of DfE, capable of remedy;

* + - * 1. there is a material detrimental change in the financial standing and/or credit rating of the Contractor which adversely impacts on the Contractor’s ability to supply Services under the Call-Off Contract;
        2. the Framework Agreement has been terminated or expired;
        3. any other Call-Off Contract with the Contractor has been terminated for Default;
        4. the Contractor fails to carry out its obligations under **clause 7** of the Framework Agreement (Conflicts); or
        5. the Contractor fails to deliver its obligations under a Rectification Plan in accordance with its terms.
      1. DfE may terminate the Call-Off Contract on written notice with immediate effect to the Contractor if:
         1. the Call-Off Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations;
         2. the Contractor was, at the time the Call-Off Contract was awarded, in one of the situations specified in regulation 57(1) of the Public Contracts Regulations, including as a result of the application of regulation 57(2) thereof, and should therefore have been excluded from the procurement procedure which resulted in its award of the Call-Off Contract; or
         3. the Call-Off Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaty on European Union, Treaty of the Functioning of the European Union or the Public Contracts Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.
      2. If DfE terminates the Call-Off Contract under **clauses 22.3** or **22.4**:
         1. and makes other arrangements for the supply of the Services, DfE may recover from the Contractor the cost reasonably incurred of making those other arrangements; and
         2. DfE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Call-Off Contract but where the payment has yet to be made by DfE), until DfE has established the final cost of making the other arrangements envisaged under this **clause 22**.
      3. DfE may terminate the Call-Off Contract (or any part of it) at any time by giving at least 3 months' prior written notice to the Contractor.
      4. If DfE terminates the Call-Off Contract DfE shall make no further payments to the Contractor except for undisputed payments for Services supplied by the Contractor prior to termination and in accordance with the Call-Off Contract but where the payment has yet to be made by DfE.
      5. If any funding from governmental or other sources for the provision of the Services, or for a programme or a project to which the provision of the Services relates is withdrawn, reallocated or no longer available in such a way that the Call-Off Contract cannot reasonably continue DfE may terminate the Call-Off Contract (or any part of it) by serving 3 months’ written notice on the Contractor.
      6. If, through any Default of the Contractor, data transmitted or processed in connection with the Call-Off Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse DfE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
      7. If DfE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to DfE of its failure to pay. If DfE fails to pay such undisputed sums within 90 Business Days of the date of such notice, the Contractor may terminate the Call-Off Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to DfE exercising its rights under **clause 12.6 (Tax and VAT)** or to Force Majeure.
      8. Save as otherwise expressly provided in the Call-Off Contract:
         1. termination or expiry of the Call-Off Contract shall be without prejudice to any rights, remedies or obligations accrued under the Call-Off Contract prior to termination or expiration and nothing in the Call-Off Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
         2. termination of the Call-Off Contract shall not affect the continuing rights, remedies or obligations of DfE or the Contractor under c**lauses 11 (Charges), 12 (****Tax and VAT),** **13 (Intellectual Property Rights), 14 (****Data), 15 (****Confidentiality), 16 (****Freedom of Information), 17 (****Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 18 (Liability), 19 (****Warranties and Representations), 22 (****Termination), 23 (****Exit Management)** and **32 (****Governing Law and Jurisdiction)** or any other Additional Clauses or terms of the Framework Agreement intended to survive the termination or expiry of the Framework Agreement or any other obligations which are either expressed to or by implication, are intended to survive termination or expiry.
      9. Either party may terminate the Call-Off Contract (or the relevant part of it) immediately upon giving written notice to the other party if the performance of the Services under the Call-Off Contract (or any part of them) would constitute a breach of a regulatory requirement or restriction.
    1. EXIT MANAGEMENT
       1. If DfE requires a continuation of all or any of the Services at the end of the Term, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with DfE and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
       2. Where so requested by the Authority, the Contractor will, within 3 months of the Effective Date, deliver to DfE, a plan which sets out the Contractor’s proposals for achieving an orderly transition of Services from the Contractor to DfE and/or its Replacement Contractor at the end of the Term (an **“Exit Plan”**).
       3. Within 30 days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in **clause 42 (Dispute Resolution)** of the Framework Agreement.
       4. The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update the Contractor will submit the revised Exit Plan to DfE for review. Within 30 days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within 30 days, such dispute shall be referred to the dispute resolution procedure in **clause 42 (Dispute Resolution)** of the Framework Agreement.
       5. If the Contractor:
          1. does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Charges; or
          2. reasonably incurs additional costs the Parties shall agree a variation of the Charges.
       6. If DfE requests, the Contractor shall deliver to DfE details of all licences for software used in the provision of the Services including the software licence agreements.
       7. Within one month of receiving the software licence information described above, DfE shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of DfE a plan for licence transfer.
       8. The Contractor shall co-operate fully with DfE in order to enable an efficient and detailed knowledge transfer from the Contractor to DfE at the end of the Term and shall provide DfE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by DfE. The Contractor shall comply with DfE’s request for information no later than 15 Business Days from the date that that request was made.
    2. ENTIRE AGREEMENT
       1. The Call-Off Contract contains all the terms which the Parties have agreed in relation to the subject matter of the Call-Off Contract and supersedes any prior written or oral agreements, representations or understandings between the Parties.
       2. Nothing in this **clause 24** shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.
    3. PARTNERSHIP
       1. Nothing in the Call-Off Contract is intended to or shall operate to create a legal partnership between the Parties or to authorise either Party to act as an agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including making any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
    4. WAIVER
       1. No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
    5. CHANGE CONTROL
       1. Either Party may at any time request in writing a Variation in accordance with the change control procedure set out in **Schedule 1** (the **“Change Control Procedure”**). No Variation shall be effective unless made in accordance with the Change Control Procedure.
    6. COUNTERPARTS
       1. The Call-Off Contract may be executed in any number of counterparts, each of which so executed and delivered shall constitute an original, but together shall constitute one and the same instrument.
    7. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
       1. The provisions of **clauses 10.8 (TUPE)** and **13.6 and 13.7 (Intellectual Property)** confer benefits on a Replacement Contractor and are intended to be enforceable by a Replacement Contractor by virtue of the Contracts (Rights of Third Parties ) Act 1999 (“**CRTPA**”).
       2. Subject to **clause 29.1**, a person who is not a Party has no right under CRTPA to enforce provisions of the Call-Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
       3. A Replacement Contractor may not enforce or take steps to enforce the provisions of **clauses 10.8 (TUPE)** or **13.6 and 13.7 (Intellectual Property)** without DfE’s prior written consent.
       4. The Parties may amend the Call-Off Contract without the consent of any Replacement Contractor.
    8. FURTHER ASSURANCE
       1. The Parties shall do or procure the doing of all such acts and things and will execute or procure the execution of all such documents as may be reasonably required including on or subsequent to the end of the Call-Off Contract to vest in the relevant all rights granted under the Call-Off Contract and otherwise to comply with its terms.
    9. NOTICES
       1. Any notice, demand or communication in connection with the Call-Off Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, facsimile or e-mail, addressed to the recipient at its registered office or its address (or such other address, facsimile number or e-mail address as may be notified in writing from time to time).
       2. The notice, demand or communication shall be deemed to have been duly served:
          1. if delivered by hand, when left at the proper address for service;
          2. if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;
          3. if given or made by facsimile or e-mail, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post or (where being sent to an address in a different country to where posted) airmail to the other Party within 24 hours after transmission and that, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).
       3. If proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.
    10. GOVERNING LAW AND JURISDICTION
        1. The Call-Off Contract and any non-contractual obligations arising out of or connection with it will be governed by and construed in accordance with English Law.
        2. The courts of England shall have exclusive jurisdiction to settle any dispute which arises out of or in connection with the Call-Off Contract.
        3. If any provision of the Call-Off Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Call-Off Contract and the remainder of the affected provisions shall continue to be valid.

**CALL-OFF CONTRACT**

**Schedule 1**

CHANGE CONTROL PROCEDURE

* + 1. The Parties acknowledge that minor changes to the Call-Off Contract may be necessary to reflect operational and administrative procedures during the Term and that such minor changes may be agreed in writing between the Parties' respective contract managers.
    2. The Contractor shall use reasonable endeavours to incorporate minor changes requested by DfE within the current Charges and shall not serve a Contractor Notice of Change unless the change involves a demonstrable material increase to its costs or requires a material change to the Call-Off Contract.
    3. Either Party may request a Variation provided that such Variation does not amount to a material change.
    4. DfE may request a Variation by completing the Change Control Notice and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Charges are required in order to implement the Variation within a reasonable time limit specified by DfE. If the Contractor accepts the Variation it shall confirm it in writing within 21 days of receiving the Change Control Notice.
    5. If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Charges, DfE may allow the Contractor to fulfil its obligations under the Call-Off Contract without Variation or if the Parties cannot agree to the Variation the Dispute will be determined in accordance with **clause 42 (Dispute Resolution) of the Framework Agreement.**
    6. If the Contractor wishes to introduce a change to the Call-Off Contract it may request a Variation by serving the Change Control Notice on DfE.
    7. DfE shall evaluate the Contractor’s proposed Variation in good faith, taking into account all relevant issues.
    8. DfE shall confirm in writing within 21 days of receiving the Change Control Notice if it accepts or rejects the Variation.
    9. DfE may at its absolute discretion reject any request for a Variation proposed by the Contractor.

**Change Control Notice**

|  |  |  |  |
| --- | --- | --- | --- |
| **Contract Number** |  | **DfE Contract / Programme Manager** |  |
| **Contractor** |  | **Original Contract Value (£)** |  |
| **Contract Start Date** |  | **Contract Expiry Date** |  |

|  |  |
| --- | --- |
| **Variation Requested** |  |
| **Originator of Variation**  **(tick as appropriate)** | **DfE** ¨ Contractor ¨ |
| **Date** |  |
| **Reason for Variation** |  |
| **Summary of Variation**  **(e.g. Call-Off Contract Specification, finances, contract period)** |  |
| **Date of** **Variation commencement** |  |
| **Date of** **Variation expiry**  **(if applicable)** |  |
| **Total Value of Variation £**  **(if applicable)** |  |
| **Payment** **Profile (if applicable)**  **e.g. milestone payments** |  |
| **Impact on original contract**  **(if applicable)** |  |
| **Supporting Information**  **(please attach all supporting documentation for this** **Change Control)** |  |
| **Terms and Conditions** | Save as herein amended all other terms and conditions of  the Original Call-Off Contract and Engagement Letter shall remain in full force and effect. |
| **Variation Agreed**  **For the Contractor****:** **For the DfE:**  **Signature……………………………………….****. Signature……………………………………….****.**  **Full Name……………………………………….****. Full Name……………………………………….****.**  **Title………………………………………………. Title……………………………………………….**  **Date………………………………………………. Date……………………………………………….** | |

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

|  |  |  |  |
| --- | --- | --- | --- |
| **To be entered by the Commercial department:** | | | |
| **Commercial Contact** |  | **Reference Number** |  |
| **Date received** |  | **EC Reference** |  |

**CALL-OFF CONTRACT**

**Schedule 2**

DATA, SYSTEMS HANDLING AND SECURITY

* + 1. Incorporation of Data Protection terms
       1. **Clause 19 (Data Protection) of the Framework Agreement** (including the clauses and defined terms referenced by them) as modified by **paragraph 1.2** is incorporated as a set of separate Call-Off Contract obligations and applies between DfE and the Contractor.
       2. **Clause 19 (Data Protection) of the Framework Agreement** is modified so that a reference to the “Framework Agreement” will be a reference to the “Call-Off Contract”.
       3. The Parties acknowledge that they are required to complete the applicable table and Annexes contained in **Schedule** 11 **(Processing, personal data and data subjects) of the Framework Agreement** for the purposes of this Call-Off Contract. The applicable table and Annexes being reproduced at **Annex 2 of Schedule 2** of this Call-Off Contract To the extent that any further specific instructions relating to the processing of Personal Data under this Call-Off Contract are detailed in an Engagement Letter, these shall also be incorporated into the table at **Annex 2**.
       4. The incorporated **clause 19 (Data Protection)** of the Framework Agreement will be referred to as “incorporated Framework clause 19”.
    2. Education Providers and Reliance Parties
       1. Without prejudice to incorporated **clause 19 (Data Protection) of the Framework Agreement**, prior to requesting or obtaining any Personal Data from an Education Provider in order to provide any or all of the Services, the Contractor shall enter into a data sharing agreement with the relevant Education Provider in a form to be approved in writing by DfE where DfE considers it necessary or desirable for a Reliance Party to have access to the Deliverables, the Contractor shall ensure that any Personal Data contained within the Deliverables should only be made available to that Reliance Party by the Contractor where strictly necessary in the circumstances. Where it is deemed strictly necessary to provide Personal Data to a Reliance Party in this way, the Contractor shall ensure that this is done in compliance with Data Protection Legislation.

**CALL-OFF CONTRACT**

**SCHEDULE 2 – ANNEX 1**

**DFE SECURITY STANDARDS**

1. Definitions

|  |  |
| --- | --- |
| “BPSS”  “Baseline Personnel Security Standard” | means the Government’s HMG Baseline Personal Security Standard. Further information can be found at: <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard> |
| “CCSC”  “Certified Cyber Security Consultancy” | is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards.  See website:  <https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy> |
| “CCP”  “Certified Professional” | is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession. See website:  <https://www.ncsc.gov.uk/information/about-certified-professional-scheme> |
| “CPA”  “Commercial Product Assurance”  [formerly called “CESG Product Assurance”] | is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. See website: <https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa> |
| “Cyber Essentials”  “Cyber Essentials Plus” | Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.  There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to these providers:  <https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body> |
| “Data”  “Data Controller”  “Data Protection Officer”  “Data Processor”  “Personal Data”  “Personal Data requiring Sensitive  Processing”  “Data Subject”, “Process” and “Processing” | shall have the meanings given to those terms by the Data Protection Act 2018 |
| "Department’s Data"  “Department’s Information” | is any data or information owned or retained in order to meet departmental business objectives and tasks, including:  (a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:  (i) supplied to the Contractor by or on behalf of the Department; or  (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or  (b) any Personal Data for which the Department is the Data Controller; |
| “DfE”  “Department” | means the Department for Education |
| “Departmental Security Standards” | means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver. |
| “Digital Marketplace / G-Cloud” | means the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. |
| End User Devices | means the personal computer or consumer devices that store or process information. |
| “Good Industry Practice”  “Industry Good Practice” | means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector. |
| “Good Industry Standard”  “Industry Good Standard” | means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector. |
| “GSC”  “GSCP” | means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <https://www.gov.uk/government/publications/government-security-classifications> |
| “HMG” | means Her Majesty’s Government |
| “ICT” | means Information and Communications Technology (ICT) and is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution |
| “ISO/IEC 27001” “ISO 27001” | is the International Standard for Information Security Management Systems Requirements |
| “ISO/IEC 27002” “ISO 27002” | is the International Standard describing the Code of Practice for Information Security Controls. |
| “ISO 22301” | is the International Standard describing for Business Continuity |
| “IT Security Health Check (ITSHC)”  “IT Health Check (ITHC)”  “Penetration Testing” | means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system. |
| “Need-to-Know” | means the Need-to-Know principle employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties. |
| “NCSC” | The National Cyber Security Centre (NCSC) is the UK government’s National Technical Authority for Information Assurance. The NCSC website is <https://www.ncsc.gov.uk> |
| “OFFICIAL”  “OFFICIAL-SENSITIVE” | the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP).    the term ‘OFFICIAL–SENSITIVE is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the GSCP. |
| “RBAC”  “Role Based Access Control” | means Role Based Access Control. A method of restricting a person’s or process’ access to information depending on the role or functions assigned to them. |
| “Storage Area Network”  “SAN” | means an information storage system typically presenting block based storage (i.e. disks or virtual disks) over a network interface rather than using physically connected storage. |
| “Secure Sanitisation” | means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.  NCSC Guidance can be found at: <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>  The disposal of physical documents and hardcopy materials advice can be found at: <https://www.cpni.gov.uk/secure-destruction> |
| “Security and Information Risk Advisor”  “CCP SIRA”  “SIRA” | means the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also:  <https://www.ncsc.gov.uk/articles/about-certified-professional-scheme> |
| “Senior Information Risk Owner”  “SIRO” | means the Senior Information Risk Owner (SIRO) responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arms length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties. |
| “SPF”  “HMG Security Policy Framework” | means the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely. <https://www.gov.uk/government/publications/security-policy-framework> |

* 1. The Contractor shall be aware of and comply with the relevant [HMG security policy framework](https://www.gov.uk/government/publications/security-policy-framework), [NCSC guidelines](https://www.ncsc.gov.uk/section/advice-guidance/all-topics) and where applicable DfE Departmental Security Standards for Contractors each in place from time to time which include but are not constrained the following clauses.
  2. Where the Contractor will provide products or services or otherwise handle information at OFFICIAL for DfE, the requirements of [Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification](https://www.gov.uk/government/publications/procurement-policy-note-0914-cyber-essentials-scheme-certification) - [Action Note 09/14](https://www.gov.uk/government/publications/procurement-policy-note-0914-cyber-essentials-scheme-certification) dated 25 May 2016, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and will be expected to retain certification at the appropriate level for the duration of the contract. The certification scope shall be relevant to the services supplied to, or on behalf of, DfE.
  3. Where paragraph 1.3 above has not been met, the Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements).
  4. The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to DfE, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
  5. The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service and will handle all data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
  6. Departmental Data being handled in the course of providing an ICT solution or service must be separated from all other data on the Contractor’s or sub-contractor’s own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required in line with paragraph 1.6.
  7. The Contractor shall have in place and maintain physical security to premises and sensitive areas in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access), CCTV, alarm systems, etc.
  8. The Contractor shall have in place and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Departmental Data. This policy should include appropriate segregation of duties and if applicable role based access controls (RBAC). User credentials that give access to Departmental Data or systems shall be considered to be sensitive data and must be protected accordingly.
  9. The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to:
  + physical security controls;
  + good industry standard policies and processes;
  + malware protection;
  + boundary access controls including firewalls;
  + maintenance and use of fully supported software packages in accordance with vendor recommendations;
  + software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
  + user access controls, and;
  + the creation and retention of audit logs of system, application and security events.
  1. The Contractor shall ensure that any departmental data (including email) transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.
  2. The Contractor shall ensure that any departmental data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the department except where the department has given its prior written consent to an alternative arrangement.
  3. The Contractor shall ensure that any device which is used to process departmental data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eud-overview/eud-security-principles>.
  4. Whilst in the Contractor’s care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
  5. The term ‘lock and key’ is defined as: “securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user’s sole control and to which they hold the keys”.
  6. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
  7. The term ‘under cover’ means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when outside official premises or buildings.
  8. In the event of termination of the Framework Agreement or any Call-Off Contract due to expiry, liquidation or non-performance, all information assets provided, created or resulting from the service shall not be considered as the supplier’s assets and must be returned to the department and written assurance obtained from an appropriate officer of the supplying organisation that these assets regardless of location and format have been fully sanitised throughout the organisation in line with clause 12.15.
  9. In the event of termination, equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored by the Contractor must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC approved product or method.
  10. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area Network (SAN) or on shared backup tapes, then the Contractor or sub-contractor shall protect the Department’s information and data until such time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
  11. Evidence of secure destruction will be required in all cases.
  12. Access by Contractor or sub-contractor staff to Departmental Data, including user credentials, shall be confined to those individuals who have a “need-to-know” in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Contractor or sub-contractor staff must complete this process before access to Departmental Data is permitted. Any Contractor or sub-contractor staff who will be in contact with children or vulnerable adults must, in addition to any security clearance, have successfully undergone an Enhanced DBS (Disclosure and Barring Service) check prior to any contact.
  13. All Contractor or sub-contractor employees who handle Departmental Data shall have annual awareness training in protecting information.
  14. The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Framework Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
  15. Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data, including user credentials, used or handled in the course of providing this service shall be recorded as an incident. This includes any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution.
  16. Incidents shall be reported to the department immediately, wherever practical, even if unconfirmed or when full details are not known, but always within 24 hours of discovery. If incident reporting has been delayed by more than 24 hours, the contractor should provide an explanation about the delay.
  + Incidents shall be reported through the department’s nominated system or service owner.
  + Incidents shall be investigated by the contractor with outcomes being notified to the Department.
  1. The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using an NCSC CHECK Scheme ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
  2. The Contractor or sub-contractors providing the service will provide DfE with full details of any actual or future intent to develop, manage, support, process or store Departmental Data outside of the UK mainland. The Contractor or sub-contractor shall not go ahead with any such proposal without the prior written agreement from DfE.
  3. DfE reserves the right to audit the Contractor or sub-contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor’s, and any sub-contractors’, compliance with the clauses contained in this paragraph.
  4. The Contractor and sub-contractors shall undergo appropriate security assurance activities and shall provide appropriate evidence including the production of the necessary security documentation as determined by the department. This will include obtaining any necessary professional security resources required to support the Contractor’s and sub-contractor’s security assurance activities such as: a Security and Information Risk Advisor (SIRA) certified to NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Cyber Professional (CCP) schemes.
  5. Where the Contractor is delivering an ICT solution to DfE they shall design and deliver solutions and services that are compliant with the HMG Security Policy Framework in conjunction with current NCSC Information Assurance Guidance and Departmental Policy. The Contractor will provide the Department with evidence of compliance for the solutions and services to be delivered. DfE’s expectation is that the Contractor shall provide written evidence of:
  + Compliance with HMG Minimum Cyber Security Standard.
  + Any existing security assurance for the services to be delivered, such as: ISO/IEC 27001 / 27002 or an equivalent industry level certification.
  + Any existing HMG security accreditations or assurance that are still valid including: details of the awarding body; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement.
  + Documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Contractor shall provide details of who the awarding body or organisation will be and date expected.
  1. The Contractor shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party suppliers, sub-contractors or partners who could potentially access Departmental Data in the course of providing this Service.

**CALL-OFF CONTRACT**

**SCHEDULE 2 –** **Annex 2**

**PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

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

* + 1. The contact details of the Controller’s Data Protection Officer are

<redacted>

* + 1. The contact details of the Processor’s Data Protection Officer are:

<redacted>

* + 1. The Processor shall comply with any further written instructions with respect to processing by the Controller.
    2. Any such further instructions shall be incorporated into this Schedule.

| **Data Processing descriptor** | **Narrative** |
| --- | --- |
| Identity of the Controller and Processor | [DfE is Controller and the Contractor is Processor]  [The Parties acknowledge that for the purposes of the Data Protection Legislation, DfE is the Controller and the Contractor is the Processor of the following Personal Data: [Insert the scope of Personal Data for which the purposes and means of the processing by the Contractor is determined by DfE]]  [The Parties are Joint Controllers]  [The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of: [Insert the scope of Personal Data for which the purposes and means of the processing is determined by both Parties together]]  The Parties are Independent Controllers of Personal Data  The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:  • Business contact details of Personnel,  • Business contact details of any directors, officers, employees, agents, consultants and contractors of DfE (excluding the Contractor Personnel) engaged in the performance of DfE’s duties under this Framework Agreement).  • [Insert the scope of other Personal Data provided by one Party who is Controller to the other Party who will separately determine the nature and purposes of its processing the Personal Data on receipt]  *Call off Related data to be inserted in Engagement Letter* |
| Subject matter of the processing | To enable the effective provision of the following services:  *Call off Related data to be inserted in Engagement Letter* |
| Duration of the processing | The Framework Contract Period and thereafter, until expiry or termination of the last Call-Off Contract under the Framework, including the period until all transactions relating to Call-Off Contracts have permanently ceased. |
| Nature and purposes of the processing | *Call off Related data to be inserted in Engagement Letter* |
| Type of Personal Data | *Call off Related data to be inserted in Engagement Letter* |
| Categories of Data Subject | *Call off Related data to be inserted in Engagement Letter* |
| Plan for return and destruction of the data once the processing is complete  UNLESS requirement under union or member state law to preserve that type of data | Data will be retained for Six (6) years after the duration of the processing outlined above and in accordance with the HMG Policy.  In accordance with the Core Terms, all DfE data and any copies held by the Supplier must be securely erased once the Processing is complete, unless the Supplier is required by law to retain it. |

**CALL-OFF CONTRACT**

**Schedule 3**

COMMERCIALLY SENSITIVE INFORMATION

The Commercially Sensitive Information referred to in the Framework Agreement and the Engagement Letter.

**CALL-OFF CONTRACT**

**Schedule 4**

THE CONTRACTOR’S PROPOSALS

Contractor’s response to the Call-Off Contract detailed within the Engagement Letter detailing how it proposes to perform the Services

**CALL-OFF CONTRACT**

**Schedule 5**

ADDITIONAL CLAUSES

The following additional terms shall apply to a Call-Off Contract where a Contracting Body has entered into a Call-Off Contract with the Contractor in accordance with clause xx of the Framework Agreement.

1. Definitions and Interpretation. Where these Additional Clauses apply in a Call-Off Contract:
   1. any reference to DfE, in any Framework Agreement clause or schedule which is expressly referred to in the Call-Off Contract or these Additional Clauses, or in any clause of the Call-Off Contract, or in any Additional Clause; shall be read as a reference to the Contracting Body, and any rights and obligations of DfE shall be deemed to be rights and obligations of the Contracting Body.
   2. save where expressly provided otherwise a reference to a clause in the Framework Agreement shall be a reference to the corresponding clause in the Framework Agreement;
   3. the following terms shall bear the following meanings:

|  |  |
| --- | --- |
| **Word or phrase** | **Meaning** |
| “Auditor” | shall comprise any of the following:   1. The Contracting Body’s internal and external auditors; 2. The Contracting Body’s statutory or regulatory auditors; 3. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; 4. HM Treasury or the Cabinet Office; 5. any party formally appointed by The Contracting Body to carry out audit or similar review functions; and 6. successors or assigns of any of the above. |
| “Business Day” | any day from Monday to Friday, excluding any bank or other national holidays in England, Wales or Scotland. |
| “Call-Off Contract” | this agreement between the Contracting Body and the Contractor consisting of the Engagement Letter, the Call-Off Terms and Conditions, together with any schedules annexes and appendices referred to therein. In the event of any conflict between any of these documents, they shall be given precedence in the order listed. |
| “Call-Off Contract Specification” | shall be as detailed in the specification set out in the Engagement Letter. |
| “Call-Off Terms and Conditions” | the standard terms and conditions of the Call-Off Contract as set out herein (including where the Additional Terms apply, the Additional Terms) |
| “Change of Control” | a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010. |
| “Charging Matrix” | the pricing matrices set out in Schedule 4 (Charging Matrix) of the Framework Agreement. |
| “Commercially Sensitive Information” | the information included at Schedule 3 (Commercially Sensitive Information) to the Call-Off Contract and/or listed in or accompanying or attached to the Engagement Letter comprised of information:   1. the Charges; 2. details of the Contractor’s Intellectual Property Rights; 3. which is provided by the Contractor to the Contracting Body in confidence for the period set out in the Engagement Letter; or 4. any information that would be regarded as commercially sensitive by a reasonable business person relating to:    1. the business, affairs, plans of the Contractor; and    2. the operations, processes, product information, know-how, designs, trade secrets or software of the Contractor. |
| “Comptroller and Auditor General” | the head of the National Audit Office who is the government official responsible for supervising the quality of public accounting and financial reporting. |
| “Confidential Information” | any information which has been designated as confidential by the disclosing party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of the disclosing party and all Personal Data. Confidential Information shall not include information which:   1. was public knowledge at the time of disclosure (otherwise than by breach of the Framework Agreement or any Call-Off Contract; 2. was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party; 3. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or 4. is independently developed without access to the Confidential Information. |
| “Contracting Body’s Representative” | any competent person appointed by the Contracting Body to be its representative in relation to the performance of the Call-Off Contract. |
| “Contractor Equipment” | the Contractor’s equipment including computer hardware, consumables, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Call-Off Contract. |
| “Contractor’s Representative” | any competent person appointed by the Contractor to be his representative in relation to the performance of the Call-Off Contract. |
| “Contract Year” | a consecutive period of twelve (12) months commencing on the Effective Date or each anniversary thereof. |
| “Control” | that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “**Controls**” and “**Controlled**" shall be interpreted accordingly. |
| “Crown” | the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, non-departmental public bodies, government offices and government agencies and “**Crown Body**” is an emanation of the foregoing. |
| “DfE Data” | any or all   1. data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:    1. supplied to the Contractor by or on behalf of DfE; or    2. which the Contractor is required to generate, process, store or transmit pursuant to the Call-Off Contract (including any photographs or other images taken by the Contractor’s Personnel on the premises); or 2. any Personal Data for which DfE is the Controller. |
| “DfE Materials” | all guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, images, videos or other material which is furnished to or made available to the Contractor by or on behalf of DfE and/or any Personal Data for which DfE is Controller. |
| “DfE’s Representative” | an authorised representative nominated by DfE. |
| “Default” | any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant party or the Personnel in connection with or in relation to the subject-matter of the Call-Off Contract and in respect of which such party is liable to the other. |
| “Deliverables” | the deliverables to be provided by the Contractor as part of the Services including without limitation, any report, written or oral advice, or other materials produced by the Contractor in the provision of the Services. |
| “DfE Assets” | DfE’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to DfE and which is or may be used in connection with the provision of the Services; |
| “DfE Data” | 1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any DfE’s Confidential Information, and which:    1. are supplied to the Contractor by or on behalf of The Contracting Body; or    2. the Contractor is required to generate, process, store or transmit pursuant to this Call Off Contract; or 2. any Personal Data for which The Contracting Body is the Controller. |
| “DOTAS” | the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992. |
| “Due Diligence Information” | any information supplied to the Contractor by or on behalf of The Contracting Body or any Education Provider prior to the Effective Date of any Call-Off Contract. |
| “Education Provider” | 1. a further education college or sixth form college in England and Wales; 2. an academy trust in England and Wales; or 3. an “English higher education provider”, as that expression is defined in section 83(1) of the Higher Education and Research Act 2017; or 4. any other learning or education provider funded by government in England and Wales from time to time. |
| “Engagement” | an order for Services sent by The Contracting Body to the Contractor |
| “Engagement Letter” | the document setting out the details of the Engagement for the Services it requires from the Contractor |
| “Environmental Information Regulations” or “EIR” | the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations. |
| “FOIA” | the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. |
| “Framework Agreement” | the Framework Agreement for the provision of the Services between The Contracting Body and Contractor, together with any schedules, annexes and appendices appended to the foregoing entered into on 16th April 2021. |
| “Framework Provider” | the Contractor and any other supplier who is appointed to the framework procured further to the OJEU notice to provide Services to the Contracting Body. |
| “Fraud” | any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts defrauding or attempting to defraud or conspiring to defraud the Crown. |
| “General Anti-Abuse Rule” | means:   1. the legislation in Part 5 of the Finance Act 2013; and 2. any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions. |
| “Good Industry Practice” | standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances. |
| “Halifax Abuse Principle” | the principle explained in the CJEU Case C-255/02 Halifax and others. |
| “HMG Security Policy Framework” | the Cabinet Office Security Policy Framework as updated from time to time, a copy of which may be found at: <https://www.gov.uk/government/publications/security-policy-framework> |
| “Hold Harmless Letter” | a letter to be entered into by the Contractor and a Reliance Party or a third party in accordance with Additional Clause 2.4 of this schedule 5 (Reliance and Disclosure)**.** |
| “Indemnified Person” | 1. The Contracting Body; 2. a Reliance Party or Replacement Contractor who is granted a licence in any Relevant IPRs in accordance with clause 13 of the Call-Off Contract; and 3. each and every person to whom the Contracting Body (or any direct or indirect sub-licensee of the Contracting Body) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Framework Agreement. |
| “Information” | has the meaning given under section 84 of the FOIA. |
| “Insolvency Event” | in respect of the Contractor [or Guarantor (as applicable)]:   1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or for any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or 2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or 3. a petition is presented for its winding up (which is not dismissed within 14 Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or 4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or 5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or 6. it is or becomes (or admits that it is) insolvent within the meaning of section 123 of the Insolvency Act 1986 (but omitting the words “it is proved to the satisfaction of the court that”); or 7. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or 8. where the Contractor [Guarantor] is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or 9. the Contractor proposes or implements (or there is declared in respect of the borrower) a suspension of payments, a moratorium in respect of any indebtedness or liabilities or reorganisation; or 10. any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction. |
| “Intellectual Property Rights” or “IPRs” | patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, know-how, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. |
| “IP Materials” | any materials used or developed for the purposes of the Framework Agreement including Framework Specific IP Materials, any programme materials, guidance, papers and research data, results, contract specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs. |
| “IPRs Claim” | any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs in combination with any item not supplied or recommended by the Contractor pursuant to this Framework Agreement or for a purpose not reasonably to be inferred from the Framework Specification or the provisions of this Framework Agreement. |
| “Key Performance Indicators” | the key performance indicators in relation to the Services set out in, **Schedule 13 (Key Performance Indicators)** of the Framework Agreement and set out in the Engagement Letter which the Contractor shall comply with. |
| “Know-How” | all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods). |
| “Law” | any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the relevant Party is bound to comply. |
| “Losses” | losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise. |
| “Month” | calendar month. |
| “Monthly Performance Report” | shall be as defined in Additional Clause 8.1 of this **schedule 5**. |
| “Notifiable Default” | shall be as defined in Additional Clause 9.2 of this **schedule 5**. |
| “Occasion of Tax Non-Compliance” | 1. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:    1. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;    2. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or 2. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or, with respect to a Call-Off Contract, the Effective Date, or to a civil penalty for fraud or evasion. |
| “OJEU Notice” | the contract notice 2020/s 218-536579 dated 9th November 2020 published in the Official Journal of the European Union |
| “Party” | any party to a Call-Off Contract. |
| “Personnel” | all persons employed by the Contractor to perform its obligations under the Call-Off Contract together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Framework Agreement. |
| “Premises” | the location where the Services are to be performed, as such location is identified in the Engagement Letter. |
| “Prohibited Act” | any of the following which constitute prohibited acts:   1. to directly or indirectly offer, promise or give any person working for or engaged by The Contracting Body a financial or other financial or other advantage to:    1. induce that person to perform improperly a relevant function or activity; or    2. reward that person for improper performance of a relevant function or activity; 2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Call Off Contract; 3. committing any offence:    1. under the Bribery Act 2010;    2. under legislation creating offences concerning fraudulent acts    3. at common law concerning fraudulent acts relating to this Call-Off Contract or any other contract with the Contracting Body; or    4. defrauding, attempting to defraud or conspiring to defraud The Contracting Body. |
| “Rectification Plan” | the plan prepared by the Contractor in accordance with Additional Clause 9.4 of this **schedule 5**. |
| “Rectification Plan Process” | the remedial process as described in Additional Clauses 9.2 to 9.6 of this **schedule 5**. |
| “Regulatory Bodies” | those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Call-Off Contract or any other affairs of the Contracting Body and “**Regulatory Body**” shall be construed accordingly. |
| “Relevant IPRs” | IPRs used to provide the Services or as otherwise provided and/or licensed by the Contractor (or to which the Contractor has provided access) to DfE or a third party in the fulfilment of the Contractor’s obligations under this Framework Agreement but excluding the DfE IP Materials which shall include without limitation Contractor Background IPRs and Framework Specific IPRs. |
| “Relevant Tax Authority” | HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in which the Contractor is established. |
| "Relevant Conviction" | a conviction for an offence involving violence or dishonesty, of a sexual nature or against minors, or for any other offence that is relevant to the nature of the Services and/or relevant to the work of DfE. |
| “Relevant Requirements” | all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010. |
| “Reliance Letter” | a letter to be entered into by the Contractor and a Reliance Party in accordance with Additional Clause 2.3 of this **schedule 5 (Reliance and Disclosure)**. |
| “Reliance Party” | the persons or entities entitled to receive access to the Deliverables produced by the Contractor as part of the Services in accordance with Additional Clause 2 of this **schedule 5 (Reliance and Disclosure)**, as such Reliance Party may be named in an Engagement Letter. |
| “Replacement Contractor” | any third party service Contractor appointed by DfE to supply any Services which are substantially similar to any of the Services and which DfE receives in substitution for any of the Services following the expiry, termination or partial termination of the Call-Off Contract. |
| “Request for Information” | a request for information under the FOIA or the Environmental Information Regulations. |
| “Services” | the Services described in the Engagement Letter. |
| “Sub-Contractor” | a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or Affiliate of the Contractor) whose services and/or goods are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and “**Sub-Contract**” shall be construed accordingly. |
| “VAT” | value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994. |

1. conflicts OF INTEREST
   1. The Contractor shall:
      1. not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under this Call-Off Contract to the required standards;
      2. take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the Contracting Body, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to The Contracting Body or any Reliance Party under the provisions of this Call-Off Contract; and

in each case, a “**Conflict of Interest**”; and

* + 1. conduct its business, operations and activities in a politically neutral fashion,
  1. The Contractor shall within 72 hours of request by the Contracting Body, perform appropriate conflict checks in accordance with Good Industry Practice and notify The Contracting Body of the results of such conflict checks.
  2. The Contractor shall actively monitor and manage conflicts in accordance with Good Industry Practice. In the event that during the term of this Call-Off Contract, a Conflict of Interest or potential Conflict of Interest arises in connection with the Services, the Contractor shall:
     1. immediately notify The Contracting Body of the Conflict of Interest or potential Conflict of Interest;
     2. take all reasonable steps to manage the Conflict of Interest or potential Conflict of Interest in accordance with **Additional Clause 1.1**; and
     3. follow The Contracting Body’s reasonable instructions in relation to such Conflict of Interest or potential Conflict of Interest; and
     4. if The Contracting Body is not satisfied with the Contractor’s actions in accordance with **Additional Clause 1.3.2**, on request by the Contracting Body promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).
  3. The Contractor shall indemnify The Contracting Body in relation to any loss arising from the termination of the Call-Off Contract in accordance with **clause 22.3 (Termination) of the Call-Off Terms and Conditions**. This shall include, but shall not be limited to, indemnification in relation to management costs and costs associated with obtaining the Services from a Replacement Contractor.

1. RELIANCE AND DISCLOSURE
   1. The Contracting Body may request that additional persons are added as a Reliance Party in an Engagement Letter or subsequently by agreement between the parties. The Contractor shall:
      1. not unreasonably withhold its consent where the Contracting Body requests prior to entry into any Engagement for any other persons to be added as an additional Reliance Party;
      2. not unreasonably withhold its consent where the Contracting Body requests following entry into any Engagement for other persons to be added as an additional Reliance Party, (provided that the parties agree and acknowledge that where there is a Conflict of Interest with such proposed additional Reliance Party the parties shall work in good faith to either manage such Conflict of Interest).
   2. The Contractor acknowledges and agrees that it owes a duty of care in its performance of the Services under any Engagement to the Contracting Body and any Reliance Party.
   3. Where the Contracting Body considers it necessary or desirable for a Reliance Party to have access to and rely on the Deliverables to the same extent as The Contracting Body, the Contractor:
      1. shall disclose the Deliverables to the relevant Reliance Party on the condition that the Contractor and the relevant Reliance Party shall enter into a Reliance Letter on reasonable terms which shall be agreed in advance with the Contracting Body and shall reflect the following principles:
         1. the Reliance Letter shall set out the terms on which the Contractor shall provide a duty of care to the of the Reliance Party;
         2. the Reliance Letter shall include a warranty that the Contractor has conducted necessary conflict checks and no Conflct of Interest applies in relation to the Reliance Party’s reliance on the Deliverable;
         3. the Reliance Letter shall specify that neither DfE nor the Contracting Body has any liability or responsibility whatsoever to the Reliance Party in relation to the Reliance Party’s reliance on the Deliverables.
      2. Save where otherwise agreed in writing between the parties, nothing in any Reliance Letter shall operate to amend any of the rights or remedies available to the Contracting Body under the terms of this Call-Off Contract.
   4. Where Contracting Party or the Contractor considers it necessary or desirable for a person or entity that is not a Reliance Party to receive access to the Deliverables, the Parties may agree that such person or entity can receive access on a non-reliance basis only, on the condition that the Contractor and the person or entity receiving access enter into a Hold Harmless Letter in a format provided to the third party by the Contractor, which shall include a provision that excludes any liability or responsibility of the Contracting Party to the third party in relation to any loss, damage, cost or expense caused by the use of reliance on the Deliverables. For the avoidance of doubt, if a party that is not the Contracting Party or a Reliance Party chooses to rely on the Deliverables they do so at their own risk.
   5. Without prejudice to this **Additional Clause 2 (Reliance and Disclosure)**, the Contracting Body acknowledges and agrees that the Deliverables, and any other opinions provided by the Contractor in connection with the Framework Agreement or Call-Off Contract should not be used for any purpose other than that for which they were prepared (or as otherwise set out in an Engagement Letter, or Reliance Letter) and shall not be reproduced or made available to any third party other than in accordance with this **Additional Clause 2 (Reliance and Disclosure)** or otherwise with the written consent of the Contractor.
2. PREVENTION OF FRAUD AND BRIBERY
   1. The Contractor shall not:
      1. commit a Prohibited Act; and/or
      2. do or suffer anything to be done which would cause the Contracting Body or any of its respective employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
   2. The Contractor shall, during the term of this Call-Off Contract:
      1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
      2. keep appropriate records of its compliance with its obligations under Additional Clause 9 and make such records available to the Contracting Body on request.
   3. The Contractor shall immediately notify the Contracting Body in writing if it becomes aware of a breach of this Additional Clause 3 or has reason to believe that it has or any of the Personnel have:
      1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
      3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of Services or otherwise suspects that any person directly or indirectly connected with the performance of Services has committed or attempted to commit a Prohibited Act.
   4. The Contractor shall respond promptly to the Contracting Body’s enquiries, co-operate with any investigation, and allow the Contracting Body to audit any books, records and/or any other relevant documentation in connection with any breach, or suspected breach of this Additional Clause 3 (Prevention of Fraud and Bribery).
   5. If the Contractor is in Default under Additional Clause 3.1, the Contracting Body may by notice:
      1. require the Contractor to remove from performance of Services any Personnel whose acts or omissions have caused the Default; or
      2. immediately terminate this Call-Off Contract.
   6. Any notice served by the Contracting Body under Additional Clause 3.5 shall specify the nature of the Prohibited Act, the identity of the party who the Contracting Body believes has committed the Prohibited Act and the action that the Contracting Body has taken (including, where relevant, the date on which the Call-Off Contract shall terminate).
   7. Any termination under this **Additional Clause 3** will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Contracting Body.
3. DISCRIMINATION
   1. The Contractor shall provide the Services and perform its obligations under this Call Off Contract in accordance with:
      1. all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
      2. the Contracting Body’s equality and diversity policy as given to the Contractor from time to time; and
      3. any other requirements and instructions which the Contracting Body reasonably imposes in connection with any equality obligations imposed on the Contracting Body at any time under applicable equality Law.
   2. The Contractor shall take all necessary steps to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation). The Contractor shall inform the Contracting Body on request of the steps taken to comply with this Additional Clause.
4. TAX COMPLIANCE
   1. If, during the term of this Call Off Contract, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
      1. notify the Contracting Body in writing of such fact within 5 Business Days of its occurrence; and
      2. promptly provide to the Contracting Body:
         1. details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
         2. such other information in relation to the Occasion of Tax Non-Compliance as the Contracting Body may reasonably require.
5. OFFICIAL SECRETS ACT 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989
   1. The Contractor shall comply with, and shall ensure that its Personnel comply with, the provisions of:
      1. the Official Secrets Acts 1911 to 1989; and
      2. Section 182 of the Finance Act 1989.
   2. In the event that the Contractor or its Personnel fail to comply with this **Additional Clause 16 (Official Secrets Act 1911 to 1989, Section 182 of the Finance Act 1989)**, the Contracting Body reserves the right to terminate or suspend the Call-Off Contract by giving notice in writing to the Contractor.
   3. A suspension notice given to a Contractor pursuant to **Additional Clause 16.2** must specify the period of suspension.
6. RECORD KEEPING AND AUDIT
   1. The Contractor shall keep and maintain for seven (7) years after the expiry of the Call-Off Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call-Off Contract (as relevant) including the Services provided under it, any Sub-Contracts and the amounts paid by the Contracting Body.
   2. The Contractor shall:
      1. keep the records and accounts referred to in **Additional Clause 23.1** in accordance with Good Industry Practice and Law;
      2. afford any Auditor access to the records and accounts referred to in **Additional Clause 23.1** at the Contractor’s premises and/or provide records and accounts (including copies of the Contractor’s published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the term of the Call-Off Contract and the period specified in **Additional Clause 23.1**, in order that the Auditor(s) may carry out an inspection to assess compliance by the Contractor and/or its Sub-Contractors of any of the Contractor’s obligations under this Call-Off Contract including in order to;
      3. verify the accuracy of any amounts payable by the Contracting Body under this Call-Off Contract (and proposed or actual variations to them in accordance with this Call-Off Contract);
      4. verify the costs of the Contractor (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
      5. verify the Contractor’s and each Sub-Contractor’s compliance with the applicable Law;
      6. identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Contracting Body shall have no obligation to inform the Contractor of the purpose or objective of its investigations;
      7. identify or investigate any circumstances which may impact upon the financial stability of the Contractor, Call-Off Guarantor and/or any Sub-Contractors or their ability to perform the Services;
      8. obtain such information as is necessary to fulfil the Contracting Body’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
      9. review any books of account and the internal contract management accounts kept by the Contractor in connection with this Call-Off Contract;
      10. carry out the Contracting Body’s internal and statutory audits and to prepare, examine and/or certify the Contracting Body’s annual and interim reports and accounts;
      11. enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Body has used its resources;
      12. review any records relating to the Contractor’s performance of the provision of the Services and to verify that these reflect the Contractor’s own internal reports and records;
      13. verify the accuracy and completeness of any information delivered or required by this Call-Off Contract;
      14. review the Contractor’s quality management systems (including any quality manuals and procedures);
      15. review the Contractor’s compliance with the Standards;
      16. inspect the DfE Assets, including DfE’s IPRs, equipment and facilities, for the purposes of ensuring that the DfE Assets are secure and that any register of assets is up to date; and/or
      17. review the integrity, confidentiality and security of the DfE Data.
   3. The Contracting Body shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of The Contracting Body.
   4. The Contracting Body may not, and may not instruct an Auditor to, conduct more than one audit per year during the term of this Call-Off Contract, unless:
      1. the Contracting Body suspects the Contractor to be in breach of any of its obligations under this **Additional Clause 7**; or
      2. an audit is required by a Regulatory Body.
   5. Subject to the Contractor’s rights in respect of Confidential Information, the Contractor shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
      1. all reasonable information requested by the Contracting Body within the scope of the audit;
      2. reasonable access to sites controlled by the Contractor and to any Contractor Equipment used in the provision of the Services; and
      3. access to the Contractor’s Personnel.
   6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this **Additional Clause 7 (Record Keeping and Audit)**, unless the audit reveals a Default by the Contractor in which case the Contractor shall reimburse the Contracting Body for the Contracting Body’s reasonable costs incurred in relation to the audit.
7. REPORTING AND MEETINGS
   1. The Contractor shall prepare and submit the following reports to the Contracting Body in connection with its performance of its obligations and the delivery of the Services under the Call-Off Contract:
      1. a monthly report (the “**Monthly Performance Report**”) setting out which the Contractor shall provide to the Contracting Body by no later than the tenth day of each calendar month:
      2. its performance against the Key Performance Indicators set out in **Schedule 13 (Key Performance Indicators) to the Framework Agreement**, and otherwise agreed between the parties in a Call-Off Contract and set out in the Engagement Letter;
      3. all work in progress costs and expenses as against the fixed Charges in the Engagement Letter;
      4. the results of any quality assurance undertaken in accordance with the Call-Off Contract Specification;
      5. full details of any complaints received from any Education Provider in connection with its delivery of the Services under this Call-Off Contract;
      6. any other management information as the Contracting Body may reasonably request.
   2. The Contracting Body’s Representative and the Contractor’s Representative shall meet from time to time (and at least once per month) to discuss:
      1. the Monthly Performance Report;
      2. the Contractor’s delivery of any Rectification Plan in accordance with **Additional Clause 9.3**;
      3. any other matters which the Contracting Body may propose.
   3. The Contracting Body may make changes to the nature of the management information that the Contractor is required to supply in the Monthly Performance Report and shall give the Contractor at least one Month’s written notice of any changes.
8. service rectification and remedies
   1. Where these Additional Clauses apply, they shall apply in place of **clause 21 (Performance Monitoring) of the Call-Off Terms and Conditions**. Without prejudice to any other right or remedy of the Contracting Body howsoever arising and subject to **clause 22 (Liability) of the** **Call-Off Contract Terms and Conditions,** if the Contractor commits any Default of this Call-Off Contract, the Contracting Body may (whether or not any part of the Services have been delivered) do any of the following:
      1. at the Contracting Body’s option, give the Contractor the opportunity to remedy (at the Contractor’s own cost) the Default together with any damage resulting from such Default;
      2. where the Default is a Notifiable Default refer the matter to the Rectification Plan Process;
      3. carry out at the Contractor’s cost any work necessary to make the provision of the Services comply with this Framework Agreement or the relevant Call-Off Contract.
   2. Without prejudice to any other right or remedy available to the Contracting Body, in the event that:
      1. there is or is likely to be three (3) or more failures to meet the Key Performance Indicators in any six (6) month period;
      2. the Monthly Performance Report identifies as part of quality assurance monitoring errors or other failings of Deliverables in more than 10% of the Deliverables in any month;
      3. any quality assurance visit conducted in accordance with the Call-Off Contract identifies errors or other failings of Deliverables in more than 10% of the Deliverables reviewed as part of the visit; or
      4. the Contractor commits a material default of this Call-Off Contract (or a number of repeated defaults which taken together constitute a material default);

each a “**Notifiable Default**”, the supplier shall notify the Contracting Body within three (3) Business Days of being aware of the Notifiable Default detailing the anticipated or actual effect of the Notifiable Default.

* 1. Where the Contractor notifies the Contracting Body of a Notifiable Default, or where The Contracting Body notifies the Contractor of a Notifiable Default, the Contractor shall submit a draft Rectification Plan to the Contracting Body for it to review as soon as possible and in any event within 10 Business Days (or such other period that may be agreed between the Parties after the original notification).
  2. The draft Rectification Plan shall set out:
     1. full details of the Notifiable Default that has occurred including root cause analysis;
     2. the actual or anticipated effects of the Notifiable Default;
     3. the steps which the Contractor proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring including timescales for such steps and for the rectification of the Notifiable Default (where applicable); and
     4. any other information that the Contracting Body may reasonably request in relation to the Notifiable Default or proposed rectification.
  3. The Contracting Body may reject the draft Rectification Plan if it acting reasonably considers it to be inadequate and will notify the Contractor as soon as reasonably practicable of its acceptance or rejection of the draft Rectification Plan. Where the Contracting Body rejects the draft Rectification Plan, the Contractor shall submit a revised draft Rectification Plan to the Contracting Body as soon as possible and within five (5) Business Days of the rejection.
  4. If the Contracting Body accepts the Rectification Plan, the Contractor shall (at its own cost) start work on the actions set out in the Rectification Plan, in accordance with its terms, and to meet any deadlines set out in the Rectification Plan.

1. KNOWLEDGE RETENTION
   1. The Contractor shall co-operate fully with the Contracting Body in order to enable an efficient and detailed knowledge transfer from the Contractor to the Contracting Body on the completion or earlier termination of the Framework Agreement or any Call-Off Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Contracting Body free of charge with full access to its Personnel, and in addition, copies of all documents, reports, summaries and any other information requested by the Contracting Body. The Contractor shall comply with The Contracting Body’s request for information no later than 15 Business Days from the date that that request was made.
2. COLLABORATION
   1. In providing Services pursuant to this Call-Off Contracts, the Contractor shall co-operate with all other organisations present on the premises in accordance with security requirements in the Call-Off Contract and in accordance with all instructions given to the Contractor by the Contracting Body or person in charge of the premises.
   2. The Contractor shall at all times during the term of the Call-Off Contract at its own cost:
      1. be open and inclusive at all levels with the Contracting Body, and where instructed to do so with any Reliance Party, Framework Provider or other persons working with the Contracting Body;
      2. participate fully in any governance, change control and other management activities anticipated or required by the Contracting Body all work in progress costs and expenses as against the fixed Charges in any Engagement Letter;
      3. where requested to do so provide access to information and materials to a Reliance Party, other Framework Provider or other persons working with the Contracting Body for the purposes of the performance or receipt of services (including where requested to facilitate peer review of Deliverables);
   3. Where the Contractor is required to share information in accordance with Additional Clause 36 (Collaboration), it shall enter into (and the Contracting Body shall procure that the party receiving such information shall enter into) a non-disclosure agreement in substantially the form set out in **Schedule 10 (Non-Disclosure Agreement) of the Framework Agreement**.
3. PERSONNEL
   1. The Contractor shall:
      1. ensure that all Personnel:
         1. are appropriately qualified, trained and experienced and carry any necessary licenses, consents and authorisations required to perform its obligations and to provide the Services under a Call-Off Contract with reasonable skill, care and diligence (and in each case meeting any working requirements set out in the Call-Off Contract Specification);
         2. are vetted in accordance with Good Industry Practice and any requirements set out in the Call-Off Contract Specification or any other policy of the Contracting Body in place from time to time;
         3. when attending the premises of the Contracting Body, comply with all instructions of Contracting Body’s Representative;
         4. in respect of the provision of Services, are lawfully entitled to work in the United Kingdom.
      2. retain overall Control of the Personnel at all times so that the Personnel shall not be deemed to be employees, agents, workers or contractors of the Contracting Body;
      3. comply with all applicable Laws relating to its Personnel, in particular, the Modern Slavery Act 2015, the Gangmasters (Licensing) Act 2004 and the Working Time Regulations 1998 (SI 1998/1833) (as amended); and
      4. be liable at all times for all acts and omissions of Personnel, so that any act or omission of Personnel which results in a Default under this Call-Off Contract shall be a Default by the Contractor.
   2. This Call-Off Contracts entered into pursuant to its terms shall constitute a contract for the provision of services and not a contract of employment and accordingly, the Contractor shall be fully responsible for and shall indemnify the Contracting Body for and in respect of any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Contractor or any of its Personnel against the Contracting Body arising out of or in connection with the provision of the Services, including any claims or actions brought under the Agency Workers Regulations 2010 (SI 2010/93).
   3. Where the Contractor or any Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call-Off Contract, the Contractor shall:
      1. At all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statues and regulations relating to national insurance contributions in respect of that consideration; and
      2. Indemnify the Contracting Body against any income tax, national insurance and social security contributions and any other liability deduction, contribution assessment or claim arising from or made in connection with the provision of the Services by the Contractor and any Personnel.
   4. If the Contracting Body reasonably believes that any of the Personnel are unsuitable to undertake work in respect of this Call-Off Contract (including where Personnel have failed to comply with instructions on the Premises as required underthis **Additional Clause 12**), it may direct the Contractor to end the involvement of the relevant Personnel in any work connected to this Call-Off Contract and/or assign an appropriate member of Personnel to supervise such work or take over the role of the member of Personnel so deemed as unsuitable (at the Contractor’s expense).
   5. The Contractor shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
   6. The Contractor shall:
      1. maintain a complete set of records to trace the supply chain of all Services provided to DfE in connection with this Call-Off Contract; and
      2. implement annual supplier and subcontractor audits, either directly or through a third party auditor to monitor compliance with the anti-slavery Laws.
   7. The Contractor shall notify the Contracting Body as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Call-Off Contract.
   8. The Contractor’s liability in relation to the indemnities provided in Additional Clause 12.2 and 12.3 shall not be subject to the caps on liability set out in Clause 18 of the Call-Off Terms and Conditions.
4. DISPUTE RESOLUTION
   1. Any Dispute shall be dealt with in accordance with this **Additional Clause 13**.
   2. In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within 15 days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.
   3. If a Dispute cannot be resolved by negotiation as referred to in **Additional Clause 13.2** within 30 days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs.

**CALL-OFF CONTRACT**

**Schedule 6**

TEMPLATE GUARANTEE

**THIS GUARANTEE** is given on [insert in manuscript the date on which the Guarantee is signed]

**BY:**

**(1) [INSERT COMPANY NAME]** (No: [insert registered number]), a company registered in England and Wales whose registered office is situated at [insert registered office address] (the "**Guarantor**");

**TO**

**(2)** **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT ("**the Department**").

**RECITALS**

In consideration of the Department entering into a contract and/or agreement (the "**Contract**") with [insert the name of the company that is providing the services or contracting with the Department] (No: [insert company number]) whose registered office address is situated at [insert registered office address] (the "**Contractor**"), the Guarantor has agreed to guarantee at all times now and in the future the due and punctual performance by the Contractor of all the Contractor's obligations, services, liabilities, duties and undertakings at all times now and in the future to the Department under or in connection with the Contract together with the due and punctual payment of all sums due at all times now and in the future from the Contractor to the Department thereunder.

**IT IS AGREED** as follows:-

1. Definitions and Interpretation
   1. In this Guarantee the following words and expressions shall have the meaning given to them below, unless the context requires otherwise:-

|  |  |
| --- | --- |
| "Contractor" | means and shall include every one or more of the Contractor(s) jointly and severally and every one or more of the persons from time to time carrying on business in the name of the Contractor and/or under the name in which the business of the Contractor may from time to time be continued |
| "**Crown**" | means Queen Elizabeth II and any successor |
| "**the Department**" | means the Department for Education, the Crown, its servants and agencies or authority and where the context admits shall include its successors in title and/or assigns and this Guarantee shall be enforceable notwithstanding any absorption in or amalgamation with any other person |
| "**Guarantor**" | means and shall include every person liable hereunder jointly and severally or any one or more of them and its respective personal representatives and the receiver or other person lawfully acting on behalf of each and/or every such person |
| "**Liabilities**" | means all liabilities and obligations, of any kind whatsoever and howsoever arising, which the Contractor may now or at any time hereafter have to the Department pursuant to the Contract whether:-   * + - 1. present or future;       2. actual or contingent;       3. incurred by the Contractor alone or jointly with another person or other persons;       4. incurred by the Contractor as principal or as surety or in some other capacity;       5. originally incurred by the Contractor or by some other person;       6. originally owing to the Department or some other person; and/or       7. incurred on any current or other account or otherwise in any manner whatsoever,   and "**Liability**" shall be construed accordingly. |

* 1. References to "Clauses" and "Schedules" mean clauses of and schedules to this Guarantee. The provisions of the Schedules shall be binding on the parties as if set out in full in this Guarantee.
  2. References to the singular include the plural and vice versa and references to any gender include both genders. References to a "**person**" shall include any individual, firm, unincorporated association or body corporate.
  3. Reference in this Guarantee to statutory provisions include all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.
  4. Headings are included in this Guarantee for ease of reference only and shall not affect the interpretation or construction of this Guarantee.
  5. Any covenant given by the Guarantor not to do any act or thing is, where appropriate, to be construed additionally as a covenant by the Guarantor not to permit or suffer such act or thing to be done by any other person and any positive covenant by the Guarantor extends to an obligation to ensure compliance by third parties.
  6. Any indemnities given by the Guarantor are to be construed as obligations to keep the Department or other specified persons indemnified against liability in respect of all proceedings, damages, penalties, costs, expenses (including legal expenses and disbursements), claims and demands of whatsoever nature (including all fees, expenditure and VAT thereby arising) in respect of the relevant act, omission or default of the Guarantor and/or Contractor as the case may be, their tenants and/or or their respective agents, servants, invitees or licensees.
  7. References to another agreement or document shall be construed as a reference to that agreement or document as the same may have been amended, varied, substituted, supplemented or novated from time to time.
  8. The expressions "**month**" and "**monthly**" shall mean calendar month and "**year**" and "**yearly**" shall mean each calendar year.
  9. Any references in this Guarantee to "writing" or any cognate expression includes references to any communication by cable, facsimile transmission, electronic mail or any comparable means.

1. Guarantee and Indemnities
   1. The Guarantor hereby unconditionally and irrevocably guarantees the due and punctual payment to the Department of all monies and liabilities including interest which are now or may at any time hereafter be due and payable to the Department from or by the Contractor under or pursuant to, or in respect of or in connection with, any of the Liabilities (whether at stated maturity, by acceleration or otherwise). Accordingly, if there shall at any time or from time to time be any default in the payment on the due date of any of such monies and liabilities, the Guarantor will immediately on demand thereof made by the Department unconditionally pay or procure to be paid to the Department the monies and liabilities in relation to which such default has been made.
   2. The Guarantor hereby unconditionally and irrevocably guarantees to the Department the due and punctual performance by the Contractor of all the Contractor's obligations, services, liabilities, duties and undertakings under, pursuant to, in respect of and/or in connection with any of the Liabilities.
   3. The Guarantor agrees, as a primary obligation, to indemnify and keep indemnified the Department from time to time on demand from and against any loss incurred by the Department as a result of any Liability being or becoming invalid, void, voidable, unenforceable or ineffective as against the Contractor for any reason whatsoever, whether or not known to the Department, the Guarantor or any other person, the amount of such loss being the amount which the Department would otherwise have been entitled to recover from the Contractor.
   4. Without prejudice to or in any way derogating from the Department's rights under the preceding Clause 2.3, the Guarantor agrees, as a primary obligation, to indemnify and keep indemnified the Department from time to time on demand against all losses, costs and expenses incurred or sustained by the Department as a result of or in connection with any failure by the Contractor (whether or not caused by or connected with any invalidity, voidability, unenforceability or ineffectiveness contemplated in Clause 2.3) fully and promptly to pay any of the monies referred to in Clause 2.1 or to discharge any of the Liabilities as and when the same shall respectively become due.
   5. The obligations of the Guarantor under each of Clauses 2.1, 2.3 and 2.4 shall be separate and independent from each other.
2. Continuing Security

The obligations of the Guarantor contained in this Guarantee shall constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever, and in particular, but without limitation, shall not be considered satisfied by any intermediate payment of all or any of the monies referred to in Clause 2 above or any other intermediate satisfaction of all or any of the Liabilities.

1. Preservation of Rights
   1. Neither the obligations of the Guarantor under this Guarantee nor the rights, powers and remedies conferred upon the Department by this Guarantee or by law shall be discharged, impaired or otherwise affected by:-
      1. any amendment to, or any variation, novation, waiver or release of, or other dealing with, any of the Liabilities or any other obligations of any person or any right or remedy in respect thereof;
      2. any amendment (however fundamental) or replacement of the Contract or any other document or security;
      3. any time or other indulgence being granted or agreed to be granted to the Contractor or any other person;
      4. any agreement, arrangement or compromise entered into with the Contractor or any other person or any variation or termination thereof;
      5. the Department doing or not doing any of the things referred to in Clause 4.2 or any act or omission in connection therewith;
      6. any act or omission in taking up, holding, perfecting, enforcing or realising any other security or rights for all or any of the obligations assumed by the Contractor to the Department or for any other obligations of any person or any variation, novation, release, discharge, exchange or substitution thereof or other dealing therewith;
      7. any insolvency, receivership, administration, bankruptcy, liquidation, winding-up, dissolution or reorganisation of the Guarantor, the Contractor, or any other person or any change in the status, function, control, ownership, name or constitution of the Guarantor, the Contractor or any other person;
      8. any of the Liabilities or any other obligations of any person or any security, guarantee or indemnity therefor being or becoming illegal, invalid, enforceable or ineffective in any respect; or
      9. any other act, event or omission which, but for this Clause 4.1, would or might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor under this Guarantee or any of the rights, powers or remedies conferred upon the Department by this Guarantee or by law.
   2. The Department shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of this Guarantee or by law:-
      1. to make any demand on the Contractor or any other person;
      2. to enforce or exercise or seek to enforce or exercise any claim, right or remedy against the Contractor or any other person or against any assets of the Contractor or any other person;
      3. to take any action or obtain any judgment in any court against the Contractor or any other person or against any assets of the Contractor or any other person;
      4. to make or file any claim or proof or application of any insolvency, receivership, administration, bankruptcy, liquidation, winding-up or dissolution, or other proceedings relating to the Contractor or any other person; or
      5. to enforce or seek to enforce any other security taken in respect of any of the Liabilities expressed to be assumed by the Contractor or any other obligations of any person.
   3. The Guarantor agrees that until the Department is satisfied that (a) the Department is under no commitment, obligation or liability (whether actual or contingent) to the Contractor or any other person which could lead to the Contractor incurring any further liability to the Department and (b) neither the Contractor nor the Guarantor has any liability (whether actual or contingent) to the Department in respect of any matter or thing whatsoever, the Guarantor shall not, without the Department's prior written consent:-
      1. in respect of any amount incurred, paid or payable by the Guarantor under or in respect of this Guarantee, seek to recover or enforce repayments from or by the Contractor or any other surety, whether by indemnity, subrogation, contribution or otherwise, or to exercise any other right, claim or remedy of any kind which may accrue howsoever to the Guarantor in respect of such amount; or
      2. claim payment of any other monies for the time being due, owing, payable or incurred to the Guarantor from or by the Contractor or any other surety on any account whatsoever, or exercise any other right, claim or remedy of any kind which the Guarantor has in respect thereof; or
      3. sell, negotiate, endorse, assign, charge or otherwise deal with any liability or obligation to the Guarantor from or by the Contractor or any other surety (whether arising from any payment made by the Guarantor under or in respect of this Guarantee or on any other account whatsoever); or
      4. take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Department in respect of any of the obligations assumed or to be assumed by the Contractor to the Department or of any other security or collateral taken by the Department pursuant to, or in connection with, the Liabilities; or
      5. exercise any right available to it as surety (whether such right arises before, at the same time as, or after any demand is made on it or any payment is made by it under or in respect of this Guarantee); or
      6. claim any set-off or assert any counterclaim against the Contractor or any other surety in relation to any liability or obligation of the Guarantor to the Contractor or any other surety; or
      7. in the event of any bankruptcy, liquidation, winding-up or dissolution of the Contractor or any other surety, claim or prove in competition with the Department, or accept any direct or indirect payment or distribution, in respect of any monies owing to the Guarantor by the Contractor or such other surety upon any account whatsoever but will, if so directed by the Department, prove for the whole or any part of such monies on such terms and subject to such conditions as the Department may specify.
   4. It is hereby declared by the Guarantor that no security or collateral has been received by the Guarantor from the Contractor or any other surety for or in respect of any of the obligations expressed to be assumed by the Guarantor in this Guarantee and it is agreed by the Guarantor that the Guarantor will not, so long as its obligations under this Guarantee remain in force, take any security or collateral for or in respect of any such obligations without first obtaining the Department's written consent.
   5. The Department may at any time apply:-
      1. any monies received from the Guarantor under or in connection with this Guarantee;
      2. any monies received from the Contractor or from any other person which are capable of being applied in reduction of any of the Liabilities or any of the obligations of the Guarantor under this Guarantee; or
      3. any monies previously placed in a separate or suspense account in accordance with Clause 4.6 below and standing to the credit thereof,

in or towards the discharge of such of the obligations expressed to be assumed by the Guarantor in this Guarantee as the Department, in its absolute discretion, may from time to time determine.

* 1. Any monies received hereunder by the Department may be placed and kept to the credit of a suspense account for so long as the Department thinks fit without any obligation in the meantime to apply the same or part thereof in or towards discharge of the Liabilities due or incurred by the Contractor to the Department. Notwithstanding any such application in the event of any bankruptcy, liquidation, composition or arrangement or any proceeding analogous thereto the Department may prove for and agree to accept any dividend or composition in respect of the whole or any part of the Liabilities in the same manner as if this Guarantee had not been created.

1. Effectiveness of Security
   1. The obligations of the Guarantor contained in this Guarantee shall be in addition to and independent of any other security or collateral which the Department may now or at any time in the future hold or take (whether from the Contractor, the Guarantor or any other person) for or in respect of the Liabilities or any of them or any other obligations whatsoever and:-
      1. shall not operate so as in any way to prejudice, determine, affect or merge in or with any such other security or collateral; and
      2. shall not be prejudiced, determined or affected by any such other security or collateral or by any release, reassignment or discharge thereof.

The Guarantor confirms that it is not relying on or expecting the Department to obtain and/or enforce any such security or collateral.

* 1. Any waiver, consent or approval given by the Department in relation to this Guarantee shall only be effective if given in writing and then only for the purpose and upon any terms and conditions on which it is given.
  2. The Department may choose when, where, how and how often to exercise each of its rights, powers and remedies as provided by this Guarantee or by law. No failure on the part of the Department to exercise, or any delay on its part in exercising, any such right, power or remedy shall impair the same or operate or be construed as a waiver thereof, nor shall any single, partial or defective exercise of any such right, power or remedy preclude any further or other exercise thereof or the exercise of any other such right, power or remedy. The rights and remedies provided in this Guarantee are cumulative and not exclusive of any rights or remedies provided by law.
  3. Without prejudice to the generality of Clause 5.3 above, the Department may make demands under any provision of this Guarantee at any time and from time to time and the making of any demand shall not prevent the making of further demands.
  4. If, at any time, any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect (or any of the security or collateral intended to be created by or pursuant to this Guarantee is ineffective) under any law of any jurisdiction, such illegality, invalidity, unenforceability or ineffectiveness shall not affect or impair:
     1. the legality, validity or enforceability of the remaining provisions or the effectiveness of any of the remaining security or collateral under such law; or
     2. the legality, validity or enforceability of such provision or the effectiveness of such security or collateral under the law of any other jurisdiction.
  5. Any settlement, release or discharge between the Guarantor and the Department shall (whether or not so expressed) be deemed to be conditional upon no right, security or collateral, disposition or payment granted or made to the Department by the Contractor or the Guarantor or any other person being void, avoided or set aside, either wholly or in part, for any reason whatsoever, including by virtue of any provisions or enactments relating to bankruptcy, insolvency, administration, liquidation or winding up for the time being in force. In the event of the whole or any part of any such right, security, disposition or payment being so void, avoided or set aside, the Department shall be entitled to enforce this Guarantee against the Guarantor subsequently as if such settlement, release or discharge had not occurred and such right, security, disposition or payment (or, as the case may be, the part thereof so void, avoided or set aside) had not been granted or made.

1. Assignment
   1. The Department shall have a full and unfettered right to assign or transfer the whole or any part of the benefit of this Guarantee. The Guarantor will, on the Department's request, immediately execute and deliver to the Department any form of instrument required by the Department to confirm or facilitate any such assignment and/or transfer.
   2. The Department shall be entitled to disclose any information about the Guarantor and any person connected or associated with it to:-
      1. any person connected or associated with the Department; and/or
      2. any actual or potential assignee or transferee of the whole or any part of the benefit of this Guarantee; and/or
      3. any other successor or proposed successor of the Department; and/or
      4. any person who has otherwise entered into or may otherwise enter into contractual relations with the Department in relation to this Guarantee and/or any of the Liabilities; and/or
      5. any person for the purpose of or in connection with any exercise by the Department of any of its rights under this Guarantee.
   3. The Guarantor may not assign or transfer any of the Guarantor's rights or obligations under this Guarantee or enter into any transaction or arrangement which would result in any of those rights or obligations passing to or being held in trust for or for the benefit of another person.
2. Interest
   1. The Guarantor agrees to pay interest to the Department on all sums demanded and payable under this Guarantee from the date of demand until the date of payment calculated at a rate of 4% above the repo rate from time to time of the Bank of England. Such interest will:-
      1. accrue from day to day after as well as before any judgement or any other event which would or might, but for this provision, reduce the rate or amount of interest payable;
      2. be calculated on the basis of actual days elapsed and a three hundred and sixty (360) (or, in the case of interest accruing in sterling, a three hundred and sixty five (365)) day year; and
      3. be payable on demand and, if not so paid, shall itself bear interest under this Clause 7.1 compounded monthly.
   2. Unless the Department otherwise agrees in writing, each payment by the Guarantor under Clause 7.1 above will be made in the same currency as that in which the sum in respect of which it accrued was due.
3. Additional Indemnity

The Guarantor agrees to indemnify the Department and keep it indemnified in full from time to time on demand from and against all liabilities, losses, costs and expenses incurred or suffered by the Department in or in connection with or directly or indirectly as a result of:-

any of the obligations or undertakings expressed to be binding on or undertaken by the Guarantor in or pursuant to this Guarantee not being performed or observed fully and punctually; and/or

any representation or warranty given or made by the Guarantor in or pursuant to this Guarantee being incorrect, untrue or misleading in any respect; and/or

the exercise or purported exercise of any of the powers, authorities or discretions vested in the Department under or pursuant to this Guarantee.

1. Payments
   1. Each payment to be made by the Guarantor under this Guarantee shall be made to the Department, in accordance with the terms hereof, in such manner as the Department may from time to time direct.
   2. All such payments shall be made in full without set-off or counter-claim and free and clear of and without deduction for or on account of tax unless the Guarantor is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Guarantor in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Department receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.
   3. The Guarantor shall:-
      1. account in full for the amount so deducted or withheld to the relevant taxation or other competent authority on or before its due date; and
      2. furnish to the Department on or before such due date an official receipt of the relevant taxation or other competent authority for the amount so deducted or withheld or if such receipts are not issued by the authority concerned a certificate of deduction or equivalent evidence relating to such amount.
   4. A certificate by an officer of the Department as to the monies and liabilities for the time being due or owing to the Department from or by the Contractor shall in the absence of manifest error be conclusive evidence for all purposes against the Guarantor.
2. Representations and warranties

The Guarantor represents and warrants to the Department that:-

**Organisation and Powers**

The Guarantor is a limited company duly incorporated in England and Wales and is qualified to do business and has all requisite power and authority to own its assets and carry on its business and to execute, deliver and perform its obligations under this Guarantee.

**Authorisation and no Conflict**

The execution, delivery and performance by the Guarantor of this Guarantee has been duly authorised by all necessary corporate action of the Guarantor, and do not and will not:

contravene the terms of the certificate of incorporation or memorandum and articles of association of the Guarantor or result in a breach of or constitute a default under any indenture or any other agreement, lease or instrument to which the Guarantor is a party or by which it or its properties may be bound or affected; or

violate any provision of any law, rule, regulation, order, writ, judgement, injunction, decree or the like binding on or affecting the Guarantor.

**Binding Obligation**

This Guarantee constitutes the legal, valid and binding obligations of the Guarantor, enforceable against the Guarantor in accordance with their respective terms.

**Governmental Consents**

No authorisation, approval, license, exemption of, or filing or registration with, any governmental authority, or approval or consent of any other person, is required for the due execution, delivery or performance by the Guarantor of its obligations pursuant to this Guarantee.

1. Notices
   1. Any notice or other communication under or in connection with this Contract shall be in writing in the English language and shall be delivered personally or sent by pre-paid registered or recorded delivery post or by facsimile or other electronic media, to the party intended to receive the notice of communication at its address set out in this Contract or such other address as that party may specify by notice in writing to the party giving notice.
   2. In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:
      1. if delivered personally, when left at the address referred to in Clause 11.1;
      2. if sent by mail, forty eight (48) hours after posting it;
      3. if sent by air mail seven (7) days after posting it; and
      4. if sent by facsimile or other electronic media, when clearly received in full provided that a copy of the notice or communication is also put into the post in accordance with Clause 11.1 within twenty four (24) hours following despatch of the initial version.
2. Publicity

Except with the prior written consent of the Department, the Guarantor and the Contractor shall not make any press announcements or publicise this Guarantee in anyway and the Guarantor and the Contractor shall take all reasonable steps to ensure the observance of the provisions of this Clause 12 by their employees, representatives, agents and sub-contractors.

1. Variation

No amendment or variation to this Guarantee shall be effective unless it is in writing and signed by or on behalf of each of the parties by their duly authorised representatives.

1. The Contracts (Rights of Third Parties) Act 1999
   1. Subject to Clause 14.2, this Guarantee is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person who is not a party to this Guarantee. Accordingly, the parties confirm that no term of this Guarantee is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Guarantee.
   2. It is the intention of the parties that any other department, officer or agency of the Crown, may as required from time to time act as the Department's agent in enforcing the Department's rights under this Guarantee.
2. Law and Jurisdiction

The parties agree that this Guarantee and any dispute arising under or in any way connected with the subject matter of this Guarantee (whether of a contractual or tortious nature or otherwise) shall be governed by and interpreted in accordance with English Law and the parties submit to the jurisdiction of the English courts.

**IN WITNESS** whereof the parties have executed this Guarantee as a **DEED** on the date first written in this Guarantee.

**EXECUTED** (but not delivered until )

the date hereof) **AS A DEED** by )

**THE SECRETARTY OF STATE FOR** )

**EDUCATION** )

acting by its duly authorised officer )

in the presence of:

Signature of Witness:

Name of Witness:

Address:

Occupation:

**EXECUTED** (but not delivered until )

the date hereof) **AS A DEED** by )

**[INSERT COMPANY NAME]** )

acting by two directors or one director )

and the secretary ) Director

in the presence of:

Director/Secretary

Signature of Witness:

Name of Witness:

Address:

Occupation:

# FRAMEWORK AGREEMENT



**ENGAGEMENT LETTER**

**LOT 1 Only**

**Provider Market Oversight (PMO) Framework: Restructuring Services**

**Engagement Letter (Lot 1)**

|  |  |
| --- | --- |
| **Engagement Number** (to be quoted on all correspondence) |  |

|  |  |  |
| --- | --- | --- |
|  | **From** | **To** |
| **Name** | DfE  The Secretary of State for Education | Contract: |
| **Address** |  | *[insert full address but if registered company please insert the following - (registered in England and Wales under number [insert company number]) whose registered office is [ ]* |
| **Invoice Address (If different)** |  |  |
| **Representative Details** | DfE Representative | Contractor’s Representative |
| **Name** |  |  |
| **Email** |  |  |
| **Telephone number** |  |  |

|  |  |
| --- | --- |
| **The Effective Date** |  |
| **The services are expected to be complete by** |  |

**SERVICES**

1. **Scope of the Appointment**

DfE will tick the relevant box(es) below to indicate the Services covered by the Engagement and will include additional detail in Annex A. DfE will specify in Annex A which Services are required from the Effective Date of the Call-Off Contract and which Services may be requested by DfE during the term of the Call-Off Contract.

1. **Independent Business Review (“IBR”) Services including:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Service Name** | **Required (Y/N)** | **Service Name** | **Required (Y/N)** |
| Finance Review |  | Educational Review |  |
| Estates Review |  | Commercial Review |  |
| Operational Review |  | Organisational Review |  |

1. **Supplementary Activity (On request from DfE)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Service Name** | **Required (Y/N)** | **Service Name** | **Required (Y/N)** |
| Financial Information |  | Prepare Statutory Documentation |  |
| Advice & Guidance |  | Prepare other Documentation |  |
| Pre Insolvency Contingency Planning | ☐ |  | |
| Other Supplementary Activity |  | Other Details: (Please specify) | |

1. **Education Administration (On request from DfE)**

|  |  |
| --- | --- |
| **Service Name** | **Required (Y/N)** |
| Education Administration |  |

1. **Insolvency process (On request from DfE)**

|  |  |
| --- | --- |
| **Service Name** | **Required (Y/N)** |
| Insolvency Process |  |
|  |  |

1. **Rate Card**

**Please insert Contractor rate card which shall not exceed the rate card as set out in the Framework Agreement**

|  |  |  |  |
| --- | --- | --- | --- |
| **Grade** | **Role** | **Hourly Rate £ (Exc VAT)** | **Daily Rate £ (Exc VAT)** |
| Partner |  |  |  |
| Director |  |  |  |
| Senior Manager |  |  |  |
| Manager (Insolvency Practitioner) |  |  |  |
| Senior Associate |  |  |  |
| Real Estate at Senior Manager |  |  |  |
| Other Staff - Administrator |  |  |  |
| Other Staff - Administrator |  |  |  |
|  |  |  |  |

1. **Costs (to be completed by Contractor)**

Please provide a breakdown of Contractor resource, time, cost, and total cost and including any discounts applied.

Costs are firm for the scope of the Framework Agreement. Any payment outside of this agreement must be agreed in writing with DfE before the Effective Date and will be in exceptional circumstances only.

1. **Charges**

Clause 14.1 of the Framework Agreement (Charges for Services) determines that Charges for any Services under a Call-Off Contract should be set out in the Engagement Letter and shall be based on the prices set out in schedule 4 of the Framework Agreement (Charging Matrix). The Charges associated with this Engagement shall be as follows:

[INSERT]

1. **Payment Period (if different from Call-Off Contract Terms and Conditions)**

[INSERT]

1. **Performance**

|  |  |
| --- | --- |
| **Service name** | **Details** |
| **Key Personnel of the Contractor to be involved in the Services (and deliverables)** |  |
| **Key-Sub-Contractor** |  |
| **Service period** |  |
| **Premises at which the Services are to be provided** |  |

**Performance Measures:**

**5A. Key Performance Indicators Specific to Call-Off Contract**

Please insert KPIs specific to the assignment

|  |  |  |  |
| --- | --- | --- | --- |
| **KPI Reference** | **Service Area** | **KPI Description** | **Target** |
|  |  |  | % |
|  |  |  | % |
|  |  |  | % |

**Quality Standards:**

**5B**. **Service Level Agreement (SLA) Specific to Call-Off Contract**

Please insert SLAs specific to the assignment

|  |  |  |  |
| --- | --- | --- | --- |
| **SLA Reference** | **Service Area** | **SLA Description** | **Target** |
|  |  |  | % DfE Monitoring |
|  |  |  | % DfE Monitoring |
|  |  |  | % DfE Monitoring |

**Management Information (MI) and meetings**

**5C. Meetings and MI specific to Call-Off Contract**

|  |  |
| --- | --- |
| Meetings required |  |
| Timing of meetings |  |
| Management Information required |  |
| Management Information deadline |  |

1. **Reliance Parties**

In accordance with clause 9.1 of the Framework Agreement (Reliance and Disclosure), DfE may request in an Engagement Letter for additional persons to be added as Reliance Parties. For the purpose of this Engagement, the Parties agree that the following should be included as Reliance Parties:

* [INSERT]

1. **Data Protection**

Clause 19.1 of the Framework Agreement (Data Protection) determines that the factual activity carried out by each Party in respect of their data protection obligations under the Framework Agreement shall be set out in the Engagement Letter. For the purpose of this Engagement, DfE shall act as [Controller/Join Controller] and the Contractor shall act as [independent Controller/Joint Controller/Processor].

Paragraph 4.3 of Schedule 11 of the Framework Agreement (Processing, Personal Data and Data Subjects) determines that, where Personal Data processing differs from the instructions given in the table within Schedule 11, DfE may include such specific instructions in the Engagement Letter and such instructions will apply in respect of that Call-Off Contract. For the purpose of this Engagement, the following instructions (if populated) shall apply the Call-Off Contract:

* [INSERT]

1. **Contractor’s Proposal**

The Contractor shall detail in Annex B how it proposes to perform the Services, as per schedule 4 of the Call-Off Contract (The Contractor’s Proposals).

1. **Confidential Information**

In addition to the information stated in Schedule 12 of the Framework Agreement, the following information shall be deemed to be Commercially Sensitive Information (Schedule 3 of the Call-Off Contract):

* [INSERT]

Duration that the information shall be deemed Commercially Sensitive Information: 6 years

**Approval and Authority to Proceed**

**BY SIGNING AND RETURNING THIS ENGAGEMENT LETTER THE PARTIES AGREE** to enter a legally binding contract with the Contractor to provide to DfE the Services specified in this Engagement Letter incorporating the rights and obligations in the Call-Off Contract set out in the Framework Agreement entered into by the DfE and the Contractor on 16th April 2021.

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** | **Title** | **Signature** | **Date** |
| **DfE:** [NAME] |  |  |  |
| **Contractor:** [NAME] |  |  |  |

**Annex A**

**Contract Specification**

|  |  |
| --- | --- |
| **Education Provider** | |
| **Name** |  |
| **Address** |  |
| **Site Contact Details** |  |
| **Additional Information** | *For example: Multi-site, learner numbers, provider type etc.* |
| **Scope of Appointment** | |
| **Guidance** | **Please delete areas which are not required for this Call-Off Contract** |
| **Finance Review** |  |
| **Educational Review** |  |
| **Estates Review** |  |
| **Commercial Review** |  |
| **Operational Review** |  |
| **Organisational Review** |  |
| **Finance Information** |  |
| **Prepare Statutory Documentation** |  |
| **Pre Insolvency Contingency Planning** |  |
| **Appointment of Education Administrator** |  |
| **Appointment of other Insolvency Services** |  |
| **Additional Notes** |  |
| **Outputs** | |
| Insert details of any reporting requirements specific to the Call-Off Contract | |

**Annex B**

**Contractor Proposal**

**LOT 3 ONLY**

**Provider Market Oversight (PMO) Framework: Audit and Assurance**

**Engagement Letter (Lot 3)**

|  |  |
| --- | --- |
| **Engagement Number** (to be quoted on all correspondence) |  |

|  |  |  |
| --- | --- | --- |
|  | **From** | **To** |
| **Name** | DfE  The Secretary of State for Education | Contract: |
| **Address** |  | *[insert full address but if registered company please insert the following - (registered in England and Wales under number [insert company number]) whose registered office is [ ]* |
| **Invoice Address (If different)** |  |  |
| **Representative Details** | DfE Representative | Contractor’s Representative |
| **Name** |  |  |
| **Email** |  |  |
| **Telephone number** |  |  |

|  |  |
| --- | --- |
| **The Effective Date** |  |
| **The services are expected to be complete by** |  |

**SERVICES**

1. **Scope of the Appointment**

DfE will tick the relevant box(es) below to indicate the Services covered by the Engagement and will include additional detail in Annex A. DfE will specify in Annex A which Services are required from the Effective Date of the Call-Off Contract and which Services may be requested by DfE during the term of the Call-Off Contract.

1. **General Audit and Assurance services**

|  |  |  |  |
| --- | --- | --- | --- |
| **Service Name** | **Required (Y/N)** | **Service Name** | **Required (Y/N)** |
| Funding audits |  | Financial management and governance |  |
| Audit of financial statements and related documents |  | Governance |  |
| Advice on financial statements and related documents |  | Grant audit and certification |  |
| Advice, support or research in respect of developing or updating technical accounting, audit, assurance or frameworks or best practice guides |  | Internal audit |  |
| Quality assurance of internal audit performance |  | Internal control checks or compliance |  |
| Compliance and quality audit |  | Risk management and internal audit control |  |
| Corporate social responsibility |  | Financial health assessments or reviews |  |
| Corrupt practices act, anti-bribery compliance |  | Special purpose reviews |  |
| Development of internal audit strategy and methodology |  | Supplier audit and supply chain assurance |  |
| External audit service |  | Sustainability assurance |  |
| Financial irregularity |  | General accounting or audit advice or testing for compliance |  |
| Other Supplementary Activity |  | Other Details: (Please specify) | |

1. **Specialist Services (On request from DfE)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Service Name** | **Required (Y/N)** | **Service Name** | **Required (Y/N)** |
| Post 16 funding assurance Reviews (Funding Audits) |  | College Financial Statement Reviews | ☐ |
| Funding Audits at academies |  | College financial health assessments | ☐ |
| Financial Management and Governance Reviews at academy trusts or colleges | ☐ | Specialist audit, assurance or accounting advice or research in developing or updating framework documents or best practice guides for the education sector | ☐ |
| Academy Trust Financial Statement Reviews | ☐ |  | |
| Other Supplementary Activity |  | Other Details: (Please specify) | |

1. **Rate Card**

**Please insert Contractor rate card (which shall not exceed the rates as set out in the Framework Agreement)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Grade** | **Role** | **Hourly Rate £ (Exc VAT)** | **Daily Rate £ (Exc VAT)** |
| Partner |  |  |  |
| Director |  |  |  |
| Senior Manager |  |  |  |
| Manager (Insolvency Practitioner) |  |  |  |
| Senior Associate |  |  |  |
| Real Estate at Senior Manager |  |  |  |
| Other Staff - Administrator |  |  |  |
| Other Staff - Administrator |  |  |  |
|  |  |  |  |

1. **Costs (to be completed by Contractor)**

Please provide a breakdown of Contractor resource, time, cost, and total cost and including any discounts applied.

Costs are firm for the scope of the Framework Agreement. Any payment outside of this agreement must be agreed in writing with DfE before the Effective Date and will be in exceptional circumstances only.

1. **Charges**

Clause 14.1 of the Framework Agreement (Charges for Services) determines that Charges for any Services under a Call-Off Contract should be set out in the Engagement Letter and shall be based on the prices set out in schedule 4 of the Framework Agreement (Charging Matrix). The Charges associated with this Engagement shall be as follows:

[INSERT]

1. **Payment Period (if different from the Call-Off Contract Terms)**

[INSERT]

1. **Performance**

|  |  |
| --- | --- |
| **Service name** | **Details** |
| **Key Personnel of the Contractor to be involved in the Services (and deliverables)** |  |
| **Key-Sub-Contractor** |  |
| **Service period** |  |
| **Premises at which the Services are to be provided** |  |

**Performance Measures:**

**5A. Key Performance Indicators Specific to Call-Off Contract**

Please insert KPIs specific to the assignment

|  |  |  |  |
| --- | --- | --- | --- |
| **KPI Reference** | **Service Area** | **KPI Description** | **Target** |
|  |  |  | % |
|  |  |  | % |
|  |  |  | % |

**Quality Standards:**

**5B**. **Service Level Agreement (SLA) Specific to Call-Off Contract**

Please insert SLAs specific to the assignment

|  |  |  |  |
| --- | --- | --- | --- |
| **SLA Reference** | **Service Area** | **SLA Description** | **Target** |
|  |  |  | % DfE Monitoring |
|  |  |  | % DfE Monitoring |
|  |  |  | % DfE Monitoring |

**Management Information (MI) and meetings**

**5C. Meetings and MI specific to Call-Off Contract**

|  |  |
| --- | --- |
| Meetings required |  |
| Timing of meetings |  |
| Management Information required |  |
| Management Information deadline |  |

1. **Reliance Parties**

In accordance with clause 9.1 of the Framework Agreement (Reliance and Disclosure), DfE may request in an Engagement Letter for additional persons to be added as Reliance Parties. For the purpose of this Engagement, the Parties agree that the following should be included as Reliance Parties:

* [INSERT]

1. **Data Protection**

Clause 19.1 of the Framework Agreement (Data Protection) determines that the factual activity carried out by each Party in respect of their data protection obligations under the Framework Agreement shall be set out in the Engagement Letter. For the purpose of this Engagement, DfE shall act as [Controller/Join Controller] and the Contractor shall act as [independent Controller/Joint Controller/Processor].

Paragraph 4.3 of Schedule 11 of the Framework Agreement (Processing, Personal Data and Data Subjects) determines that, where Personal Data processing differs from the instructions given in the table within Schedule 11, DfE may include such specific instructions in the Engagement Letter and such instructions will apply in respect of that Call-Off Contract. For the purpose of this Engagement, the following instructions (if populated) shall apply the Call-Off Contract:

* [INSERT]

1. **Contractor’s Proposal**

The Contractor shall detail in Annex B how it proposes to perform the Services, as per schedule 4 of the Call-Off Contract (The Contractor’s Proposals).

1. **Confidential Information**

In addition to the information stated in Schedule 13 of the Framework Agreement, the following information shall be deemed to be Commercially Sensitive Information (Schedule 3 of the Call-Off Contract):

* [INSERT]

Duration that the information shall be deemed Commercially Sensitive Information: 6 years

**Approval and Authority to Proceed**

**BY SIGNING AND RETURNING THIS ENGAGEMENT LETTER THE PARTIES AGREE** to enter a legally binding contract with the Contractor to provide to DfE the Services specified in this Engagement Letter incorporating the rights and obligations in the Call-Off Contract set out in the Framework Agreement entered into by the DfE and the Contractor on 16th April 2021.

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** | **Title** | **Signature** | **Date** |
| **DfE:** Name |  |  |  |
| **Contractor:** Name |  |  |  |

**Annex A**

**Contract Specification**

|  |  |
| --- | --- |
| **Education Provider** | |
| **Name** |  |
| **Address** |  |
| **Site Contact Details** |  |
| **Additional Information** | *For example: Multi-site, learner numbers, provider type etc.* |
| **Scope of Appointment** | |
| **Guidance** | **Please delete areas which are not required for this Call-Off Contract** |
| **Funding audits** |  |
| **Audit of financial statements and related documents** |  |
| **Advice on financial statements and related documents** |  |
| **Advice, support or research in respect of developing or updating technical accounting, audit, assurance or frameworks or best practice guides** |  |
| **Quality assurance of internal audit performance** |  |
| **Compliance and quality audit** |  |
| **Corporate social responsibility** |  |
| **Corrupt practices act, anti-bribery compliance** |  |
| **Development of internal audit strategy and methodology** |  |
| **External audit service** |  |
| **Financial irregularity** |  |
| **Other Supplementary Activity** |  |
| **Financial management and governance** |  |
| **Governance** |  |
| **Grant audit and certification** |  |
| **Internal audit** |  |
| **Internal control checks or compliance** |  |
| **Risk management and internal audit control** |  |
| **Financial health assessments or reviews** |  |
| **Special purpose reviews** |  |
| **Supplier audit and supply chain assurance** |  |
| **Sustainability assurance** |  |
| **General accounting or audit advice or testing for compliance** |  |
| **Post 16 funding assurance Reviews (Funding Audits)** |  |
| **Funding Audits at academies** |  |
| **Financial Management and Governance Reviews at academy trusts or colleges** |  |
| **Academy Trust Financial Statement Reviews** |  |
| **College Financial Statement Reviews** |  |
| **College financial health assessments** |  |
| **Specialist audit, assurance or accounting advice or research in developing or updating framework documents or best practice guides for the education sector** |  |
| **Additional Notes** |  |
| **Outputs and Deliverables** | |
| Insert details of any reporting requirements specific to the Call-Off Contract (including deadlines and acceptance criteria) | |

**Annex B**

**Contractor Proposal**

# FRAMEWORK AGREEMENT



# BUSINESS CONTINUITY AND DISASTER RECOVERY

* + 1. DEFINITIONS

1.1 For the purposes of this **Schedule 8**, unless the context otherwise requires the following terms shall have the meanings given to them below:

“**BCDR Plan**” means the Contractor’s business continuity and disaster recovery plan, as may be amended from time to time.

“**Disaster**” means an event defined as a disaster in the BCDR Plan in accordance with **paragraph 6.3** of this Schedule.

"**Related Service Contractor**" means any person who provides services to DfE in relation to the Services from time to time.

* + 1. PURPOSE OF THIS SCHEDULE
       1. The Contractor shall develop, review, test, change, and maintain a BCDR Plan during the term of the Framework Agreement for use in the event of a Disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services.
       2. The purpose of the BCDR Plan shall be to ensure that, in the event of a disruption, howsoever caused, DfE is able to maintain continuance of the Services. The BCDR Plan shall cater for any failure or disruption and shall address the various possible levels of failure or disruption (that is, from minimal failure through to total failure).
       3. The BCDR Plan shall be comprised of three parts:
          1. Part A which shall set out general principles applicable to the BCDR Plan ("**General Principles**").
          2. Part B which shall relate to business continuity ("**Business Continuity Plan**"); and
          3. Part C which shall relate to disaster recovery ("**Disaster Recovery Plan**").
       4. The BCDR Plan shall detail the processes and arrangements which the Contractor shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a Disaster.
    2. PART A - GENERAL PRINCIPLES AND REQUIREMENTS
       1. The BCDR Plan shall:
          1. set out how the business continuity and Disaster recovery elements of the BCDR Plan link to each other;
          2. provide details of how the implementation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to DfE by a Related Service Contractor and/or by a Sub-Contractor to the Contractor;
          3. contain an obligation upon the Contractor to liaise with DfE and (at DfE's request) any Related Service Contractor and/or Sub-Contractor with respect to issues concerning business continuity and Disaster recovery where applicable;
          4. detail how the BCDR Plan links and interoperates with any overarching and/or connected Disaster recovery or Business Continuity Plan of the DfE and any of its other Related Service Contractors as notified to the Contractor by DfE from time to time;
          5. where required by DfE,contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by DfE;
          6. contain a risk analysis, including:

identification of any single points of failure within the Services and processes for managing the risks arising therefrom;

identification of risks arising from the interaction of the Services with the services provided by a Related Service Contractor and/or a Sub-Contractor;

a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;

where required by DfE, failure or disruption scenarios and assessments and estimates of frequency of occurrence;

* + - * 1. provide for documentation of processes, including business processes, and procedures;
        2. set out key contact details (including roles and responsibilities) for the Contractor (and any Sub-Contractors) and for DfE;
        3. identify the procedures for reverting to "normal service";
        4. set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that the data loss does not exceed the amount set out in the Services and to preserve data integrity;
        5. identify the responsibilities (if any) that DfE has agreed it will assume in the event of the invocation of the BCDR Plan; and
        6. provide for the provision of technical advice and assistance to key contacts at DfE as notified by DfE from time to time to inform decisions in support of DfE’s business continuity plans.
      1. The BCDR Plan shall be designed so as to ensure that:
         1. it complies with the relevant provisions of BS25999 or equivalent and all other applicable Quality Standards from time to time in force;
         2. the Services are provided in accordance with the Contractor at all times during and after the invocation of the BCDR Plan;
         3. the adverse impact of any Disaster, service failure, or disruption on the operations of DfE is minimal as far as reasonably possible; and
         4. there is a process for the management of Disaster recovery testing detailed in the BCDR Plan.
      2. The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.
      3. The BCDR Plan must address and provide for actions and contingencies in order to mitigate any potential delay or impediment to the Services arising from future COVID-19 disruption.
      4. The Contractor shall not be entitled to any relief from its obligations or to any increase in the Contract Price to the extent that a Disaster occurs as a consequence of any breach by the Contractor of this Framework Agreement or the Call-Off Contract.
    1. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS
       1. The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including but not limited to and unless DfE expressly states otherwise in writing:
          1. the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
          2. the steps to be taken by the Contractor upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
       2. The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Services and the services to be provided and the steps to be taken to remedy the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.
    2. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS
       1. The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Contractor ensures continuity of the business operations of DfE supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
       2. The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.
       3. The Disaster Recovery Plan shall include the following:
          1. the technical design and build specification of the Disaster Recovery System;
          2. details of the procedures and processes to be put in place by the Contractor and any Sub-Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

data centre and Disaster recovery site audits;

backup methodology and details of the Contractor 's approach to data back-up and data verification;

identification of all most likely Disaster scenarios;

risk analysis;

documentation of processes and procedures;

hardware configuration details;

network planning including details of all relevant data networks and communication links;

invocation rules;

service recovery procedures;

steps to be taken upon Services resumption to address any prevailing effect of the Services failure or disruption;

* + - * 1. any applicable service levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the service levels during any period of invocation of the Disaster Recovery Plan;
        2. details of how the Contractor shall ensure compliance with **clause 14 (Data, Systems Handling and Security) of the** **Call-Off Terms and Conditions** and ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
        3. access Controls (to any Disaster recovery sites used by the Contractor or any Sub-Contractor in relation to its obligations pursuant to this Schedule); and
        4. training of staff, testing and management arrangements.
    1. REVIEW AND AMENDMENT OF THE BCDR PLAN
       1. The Contractor shall review part or all of the BCDR Plan (and the risk analysis on which it is based):
          1. on a regular basis and as a minimum once every twelve (12) Months;
          2. within three (3) Months of the BCDR Plan (or any part) having been invoked pursuant to **paragraph 8** of this Schedule;
          3. where DfE requests any additional reviews (over and above those provided for in **paragraphs 6.1.1** and **6.1.2** of this Schedule) by notifying the Contractor to such effect in writing, whereupon the Contractor shall conduct such reviews in accordance with DfE's written requirements. The costs of both Parties for any such additional reviews will be met by DfE; and
          4. where DfE requests an independent review of the Contractor’s BCDR Plan or a Sub-Contractor’s BCDR Plan, the Contractor shall afford DfE or DfE’s representatives such access to the Premises as may be required to review those records and processes as may be requested by DfE in connection with the BCDR.
       2. Each review pursuant to **paragraph 6.1** of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Contractor within the period required by the BCDR Plan or if no such period is required within such period as DfE shall reasonably require. The Contractor shall, within 20 calendar Business Days of the conclusion of each such review of the BCDR Plan, provide to DfE a report (**"Review Report****"**) setting out:
          1. the findings of the review;
          2. any changes in the risk profile associated with the Services; and
          3. the Contractor's proposals (**"****Contractor's Proposals****"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Contractor can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
       3. The Contractor shall as soon as is reasonably practicable after receiving the DfE's approval of the Contractor's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Contractor's Proposals. Any such change shall be at the Contractor’s expense unless it can be reasonably shown that the changes are required because of a material change to the project’s risk profile.
    2. TESTING OF THE BCDR PLAN
       1. The Contractor shall test the BCDR Plan on a regular basis (and in any event not less than once in every Framework Agreement year). Subject to **paragraph 7.2**, DfE may require the Contractor to conduct additional tests of some or all aspects of the BCDR Plan at any time where DfE considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
       2. If DfE requires an additional test of the BCDR Plan it shall give the Contractor written notice and the Contractor shall conduct the test in accordance with DfE’s requirements and the relevant provisions of the BCDR Plan. The Contractor's costs of the additional test shall be borne by DfE unless the BCDR Plan fails the additional test in which case the Contractor's costs of that failed test shall be borne by the Contractor.
       3. Following each test, the Contractor shall send to DfE a written report summarising the results of the test and shall promptly implement any actions or remedial measures which DfE considers to be necessary as a result of those tests.
       4. The Contractor shall undertake and manage testing of the BCDR Plan in full consultation with DfE and shall liaise with DfE in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of DfE in this regard. Each test shall be carried out under the supervision of DfE or its nominee.
       5. The Contractor shall ensure that any use by it or any Sub-Contractor of "*live*" data in such testing is first approved with DfE. Copies of live test data used in any such testing shall be (if so required by DfE) destroyed or returned to DfE on completion of the test.
       6. The Contractor shall, within 20 Business Days of the conclusion of each test, provide to DfE a report setting out:
          1. the outcome of the test;
          2. any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
          3. the Contractor's Proposals for remedying any such failures.
       7. Following each test, the Contractor shall take all measures requested by DfE, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Contractor, at no additional cost to DfE, by the date reasonably required by DfE and set out in such notice.
       8. For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan’s procedures) shall not relieve the Contractor of any of its obligations under this Schedule or otherwise.
       9. The Contractor shall also perform a test of the BCDR Plan as part of the commissioning of any new project.
    3. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN
       1. In the event of a complete loss of service or in the event of a Disaster, the Contractor shall immediately invoke the BCDR Plan (and shall inform DfE promptly of such invocation). In all other instances the Contractor shall only invoke or test the BCDR Plan with the prior consent of DfE.

# FRAMEWORK AGREEMENT



# CHANGE CONTROL NOTICE

**Contract/****Framework Agreement Change Note “****CCN”**

|  |  |
| --- | --- |
| **Contract/****Framework Agreement Change Note Number**  **Contract/****Framework Agreement Reference Number & Title**  **Variation Title**  **Number of Pages** |  |

WHEREAS the [Contractor] and the [DfE] entered into a [Framework Agreement] for the supply of [project name] dated [dd/mm/yyyy] (the Framework Agreement/Call-Off Contract/Engagement Letter) and now wish to amend the [the Framework Agreement/Call-Off Contract/Engagement Letter].

IT IS AGREED as follows

* + 1. With effect from [date] the [Framework Agreement/Call-Off Contract/Engagement Letter] shall be amended as set out in this Change Control Note:

|  |  |  |
| --- | --- | --- |
| Change Requestor / Originator |  | |
| Summary of Change |  | |
| Reason for Change |  | |
| Revised Contract Price | Original Contract Value | £ |
| Previous Contract Changes | £ |
| Contract Change Notice [x] | £ |
| New Contract Value | £ |
| Revised Payment Schedule |  | |
| Revised Specification (See Annex [x] for Details) |  | |
| Revised Framework Term |  | |
| Change in Contract Manager(s) |  | |
| Other Changes |  | |

* + 1. Save as herein amended all other Terms and Conditions of the [Framework Agreement/Call-Off Contract/Engagement Letter] shall remain in full force and effect.

Signed for and on behalf of the [Contractor] by:

|  |  |
| --- | --- |
| Name |  |
| Title |  |
| Signature |  |
| Date |  |

Signed for and on behalf of the [DfE] by:

|  |  |
| --- | --- |
| Name |  |
| Title (DfE) Representative |  |
| Signature |  |
| Date |  |

**FRAMEWORK AGREEMENT**



**NON-DISCLOSURE AGREEMENT**

**THIS NON DISCLOSURE AGREEMENT** is made the [insert] day of [insert month and year] (the “**Commencement Date**”)

**BETWEEN:**

1. **[Insert full name of Contractor]** of **[insert full address but if registered company please insert the following -** (registered in England and Wales under number [insert company number]) whose registered office is situated at **[ ]** (the “**Contractor**”);
2. **[Insert name and address of the Personnel member, professional advisor or consultant of the Contractor]** (the "**Recipient**").

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

**WHEREAS:**

1. The Contractor has contracted with the Secretary of State for Education to provide Services to DfE and other contracting bodies pursuant to a Framework Agreement dated [insert date] (“**Framework Agreement**").
2. [DfE may order Services pursuant to the Framework Agreement by entering into a Call-Off Contract with the Contractor.
3. The Framework Agreement and Call-Off Contracts impose obligations of confidentiality on the Contractor. The Recipient is an an [insert employee, sub-contractor, professional advisor or consultant] of the Contractor engaged in the provision of certain services to DfE in support of or in connection with the Services to be provided by the Contractor under the Framework Agreement and Call-Off Contracts.
4. The Recipient may therefore, have communicated to it, certain Confidential Information belonging to DfE or contracting bodies which is proprietary and must be held in confidence. Accordingly, the Framework Agreement and Call-Off Contract require the Contractor to ensure that the Recipient enters into a non-disclosure agreement with the Contractor on the terms and conditions set out herein.
5. Any Confidential Information disclosed by DfE or the Contractor to the Recipient, whether contained in original or copy documents, will at all times remain the property of DfE together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

**NOW IT IS AGREED as follows:**

**Definition and Interpretation**

* + 1. In this Agreement:
       1. “**Confidential Information**” means: any information which has been designated as confidential by DfE in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of DfE which relates to research, development, trade secrets, formulae, processes, designs, specifications, DfE data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Recipient owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, Intellectual Property Rights or know-how of DfE and all Personal Data; whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;
       2. “**Law**” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply.
    2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
    3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
    4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
    5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

**CONFIDENTIALITY**

* + 1. The Recipient undertakes to hold in confidence all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Contractor’s delivery of the Services under the Framework Agreement and Call-Off Contracts without the prior written permission of DfE.
    2. The Recipient will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.
    3. The Recipient shall, with respect to any Confidential Information it receives directly from or on behalf of DfE or from the Contractor, comply, with all instructions and/or guidelines produced and supplied by or on behalf of DfE from time to time for the handling and storage of Confidential Information, generally or for specific items.
    4. The Recipient will not disclose any Confidential Information or any part thereof to any third party.
    5. Where the Recipient is an employee of the Contractor, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Contractor shall institute and enforce such disciplinary proceedings as against the Recipient in relation to such breach.
    6. Where the disclose is a professional advisor, sub-contractor or consultant, breach of the obligation set out herein shall entitle the Contractor to terminate the Engagement or Sub-Contract with the Recipient immediately, and the Contractor shall enforce such right of termination as against the Recipient in relation to such breach.
    7. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Contractor or where so required by DfE and notified to the Recipient, to DfE, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
    8. The Confidential Information will not be used by the Recipient for any purpose or in any way other than under this Agreement.
    9. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
       1. Disclosure of Confidential Information by the Recipient when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
       2. Disclosure of Confidential Information by the Recipient where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
       3. Disclosure of Confidential Information by the Recipient where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
       4. Possession of Confidential Information by the Recipient where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;

provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of DfE.

* + 1. The Recipient shall: notify the Contractor and DfE promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.
    2. The obligations contained in this Agreement shall continue until notified in writing by DfE or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).
    3. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registerable or unregisterable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.
    4. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.
    5. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.
    6. Without affecting any other rights or remedies that the other Parties to this Agreement may have, the Recipient acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

**GENERAL**

* + 1. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.
    2. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of DfE.
    3. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.
    4. The Parties do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than DfE. The Parties shall only with the prior written consent of DfE be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.
    5. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
    6. The Parties to this Agreement irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

This Agreement has been entered into on the date first written above.

SIGNED by the authorised signatory for and on behalf of the Contractor:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNED by the Recipient:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FRAMEWORK AGREEMENT**



# PROCESSING, PERSONAL DATA AND DATA SUBJECTS

* + 1. This Schedule shall be completed by DfE, who may take into account of the view of the Contractor, however the final decision as to the content of this Schedule shall be with DfE at its absolute discretion.
    2. The contact details of DfE Data Protection Officer are:
    3. <redacted>The contact details of the Contractor Data Protection Officer are:

<redacted>

* + 1. Pursuant to **clause 19.1 (Data Protection) of the** **Framework Agreement**:
       1. where the Parties determine that either (i) the parties are acting as Joint Controllers, (ii) the parties are acting as independent Controllers or (iii) DfE is the Controller and the Contractor is acting as its Processor for any Personal Data processed under this Framework Agreement this detail shall be documented in the table below;
       2. where the Parties determine that DfE is the Controller and the Contractor is the Processor for any Personal Data processed under this Framework Agreement, the Contractor shall comply with any further written instructions in respect to processing by DfE. Any such further instructions shall be incorporated into this Schedule;
       3. in relation to any Personal Data to be processed under a Call-Off Contract, the Engagement Letter shall state whether the Parties will be acting as Joint Controllers, independent Controllers or whether DfE is the Controller and the Contractor is acting as its Processor. Where the Parties determine in an Engagement Letter that the Call-Off Contract involves Personal Data processing that differs from instructions given in the table below, DfE may include such specific instructions in the Engagement Letter and such instructions shall apply in respect of that Call-Off Contract.

|  |  |
| --- | --- |
| **Data** **Processing descriptor** | **Narrative** |
| Identity of the Controller and Processor | **DfE is Controller and the Contractor is Processor**  The Parties acknowledge that for the purposes of the Data Protection Legislation, DfE is the Controller and the Contractor is the Processor of the following Personal Data:   * Business contact details of Supplier Personnel for which the Supplier is the processor, * Business contact details of any directors, officers, employees, agents, consultants and contractors of DfE (excluding the Supplier Personnel) engaged in the performance of the DfE duties under the Contract for which DfE is the Controller   **The Parties are Joint Controllers**  The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:   * Business contact details of Supplier Personnel for which the Supplier is the Controller, * Business contact details of any directors, officers, employees, agents, consultants and contractors of DfE (excluding the Supplier Personnel) engaged in the performance of the DfE’ duties under the Contract for which DfE is the Controller   **The Parties are Independent Controllers of Personal Data**  The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:   * Business contact details of Supplier Personnel for which the Supplier is the Controller, * Business contact details of any directors, officers, employees, agents, consultants and contractors of Relevant Authority (excluding the Supplier Personnel) engaged in the performance of the Relevant Authority’s duties under the Contract) for which the Relevant Authority is the Controller. |
| Subject matter of the processing | To enable the effective provision of the following services:  To manage the framework supplier and to award and manage call off contracts made under the terms of the agreement. |
| Duration of the processing | The Framework Contract Period and thereafter, until expiry or termination of the last Call-Off Contract under the Framework, including the period until all transactions relating to Call-Off Contracts have permanently ceased. |
| Nature and purposes of the processing | To facilitate the procurement of Goods and Services from the Framework Contract by the DfE and enable DfE to provide ongoing support and a point of escalation in the day to day management of their individual Call-Off Contracts.  Day to day management and performance of obligations under the Framework Contract, including exit management and other associated activities. |
| Type of Personal Data | Personal details of each Party’s Personnel engaged in the performance of obligations and day to day management of the Framework Contract:   * Full name * Job title * Organisation name * Business/workplace address * Business/workplace email address * Business/workplace telephone/mobile number(s) * Supplier Personnel date of birth (when required for security purposes) * Supplier Dun & Bradstreet Data Universal Numbering System (DUNS number) * Registered company details including registered company name, address and company registration number (CRN) * Bank account details for activities related to payment under the Contract * Management Information |
| Categories of Data Subject | Personnel data of the Parties involved in the performance of obligations and day to day management of the Framework Contract.   * Staff (including volunteers, agents, and temporary workers) * customers/ clients * suppliers * students / pupils |
| Plan for return and destruction of the data once the processing is complete  UNLESS requirement under union or member state law to preserve that type of data | Data will be retained for six (6) years after the duration of the processing outlined above and in accordance with the HMG Policy.  In accordance with the Core Terms, all DfE data and any copies held by the Supplier must be securely erased once the Processing is complete, unless the Supplier is required by law to retain it. |

**Annex 1: Joint Controller Agreement**

* + 1. Controller Status and Allocation of Responsibilities
       1. With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Controller in respect of that Personal Data in accordance with the terms of this **Annex 1 (Joint Controller Agreement)**. Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controllers.
       2. The Parties agree that the Contractor:
          1. is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
          2. shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
          3. is solely responsible for the Parties’ compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
          4. is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for processing in connection with the Services where consent is the relevant legal basis for that processing; and
          5. shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the Contractor’s privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
       3. Notwithstanding the terms of **paragraph 1.2**, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.
    2. Undertakings of both Parties
       1. The Contractor and DfE each undertake that they shall:
          1. report to the other Party every six months on:

the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);

the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;

any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party’s obligations under applicable Data Protection Legislation;

any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and

any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

that it has received in relation to the subject matter of the Framework Agreement during that period;

* + - * 1. notify each other immediately if it receives any request, complaint or communication made as referred to in **paragraphs 2.1.1.1** to **2.1.1.5**;
        2. provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in **paragraphs 2.1.1.3** to **2.1.1.5** to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.
        3. not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under this Framework Agreement or is required by Law). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.
        4. request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
        5. ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data.
        6. take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:

are aware of and comply with their duties under this Annex 1 (Joint Controller Agreement) and those in respect of Confidential Information;

are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;

have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;

* + - * 1. ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:

nature of the data to be protected;

harm that might result from a Data Loss Event;

state of technological development; and

cost of implementing any measures;

* + - * 1. ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Contractor holds; and
        2. ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.
      1. Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its’ obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations
    1. Data Protection Breach
       1. Without prejudice to **paragraph 3.2**, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:
          1. sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
          2. all reasonable assistance, including:

co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

co-operation with the other Party including taking such reasonable steps as are directed by DfE to assist in the investigation, mitigation and remediation of a Personal Data Breach;

co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;

providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in **paragraph 3.2**.

* + - * 1. Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party’s own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

the nature of the Personal Data Breach;

the nature of Personal Data affected;

the categories and number of Data Subjects concerned;

the name and contact details of the Contractor’s Data Protection Officer or other relevant contact from whom more information may be obtained;

measures taken or proposed to be taken to address the Personal Data Breach; and

describe the likely consequences of the Personal Data Breach.

* + - 1. Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party’s own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:
         1. the nature of the Personal Data Breach;
         2. the nature of Personal Data affected;
         3. the categories and number of Data Subjects concerned;
         4. the name and contact details of the Contractor’s Data Protection Officer or other relevant contact from whom more information may be obtained;
         5. measures taken or proposed to be taken to address the Personal Data Breach; and
         6. describe the likely consequences of the Personal Data Breach.
    1. Audit
       1. The Contractor shall permit:
          1. DfE, or a third-party auditor acting under DfE’s direction, to conduct, at DfE’s cost, data privacy and security audits, assessments and inspections concerning the Contractor’s data security and privacy procedures relating to Personal Data, its compliance with this **Annex 1** and the Data Protection Legislation.
          2. DfE, or a third-party auditor acting under DfE’s direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Contractor so far as relevant to the Framework Agreement, and procedures, including premises under the control of any third party appointed by the Contractor to assist in the provision of the Services.
       2. DfE may, in its sole discretion, require the Contractor to provide evidence of the Contractor’s compliance with **paragraph 4.1** in lieu of conducting such an audit, assessment or inspection.
    2. Impact Assessments
       1. The Parties shall:
          1. provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);
          2. maintain full and complete records of all processing carried out in respect of the Personal Data in connection with this Framework Agreement, in accordance with the terms of Article 30 GDPR.
    3. ICO Guidance
       1. The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. DfE may on not less than thirty (30) Working Days’ notice to the Contractor amend this Framework Agreement to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.
    4. Liabilities for Data Protection Breach
       1. If financial penalties are imposed by the Information Commissioner on either DfE or the Contractor for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:
          1. If in the view of the Information Commissioner, DfE is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of DfE, its employees, agents, contractors (other than the Contractor) or systems and procedures controlled by DfE, then DfE shall be responsible for the payment of such Financial Penalties. In this case, DfE will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Contractor shall provide to DfE and its third party investigators and auditors, on request and at the Contractor's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;
          2. If in the view of the Information Commissioner, the Contractor is responsible for the Personal Data Breach, in that it is not a breach that DfE is responsible for, then the Contractor shall be responsible for the payment of these Financial Penalties. The Contractor will provide to DfE and its auditors, on request and at the Contractor’s sole cost, full cooperation and access to conduct a thorough audit of such data incident.
          3. If no view as to responsibility is expressed by the Information Commissioner, then the Contractor and DfE shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the dispute resolution procedure set out with clause 42 of the Framework Agreement (Dispute Resolution).
       2. If either DfE or the Contractor is the defendant in a legal claim brought before a court of competent jurisdiction (“**Court**”) by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
       3. In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the “**Claim** **Losses**”):
          1. if DfE is responsible for the relevant breach, then DfE shall be responsible for the Claim Losses;
          2. if the Contractor is responsible for the relevant breach, then the Contractor shall be responsible for the Claim Losses: and
          3. if responsibility is unclear, then DfE and the Contractor shall be responsible for the Claim Losses equally.
       4. Nothing in **paragraphs 7.2** and **7.2** shall preclude DfE and the Contractor reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the breach and the legal and financial obligations of DfE.
    5. Termination
       1. If the Contractor is in material Default under any of its obligations under this **Annex 1 (Joint Control Agreement)**, DfE shall be entitled to terminate this Framework Agreement.
    6. Sub-Processing
       1. In respect of any processing of Personal Data performed by a third party on behalf of a Party, that Party shall:
          1. carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Framework Agreement, and provide evidence of such due diligence to the other Party where reasonably requested; and
          2. ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.
    7. Data Retention
       1. The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this Framework Agreement), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

**FRAMEWORK AGREEMENT**



**COMMERCIALLY SENSITIVE INFORMATION**

* + 1. Without prejudice to DfE's general obligation of confidentiality, the Parties acknowledge that DfE may have to disclose Information in or relating to the Framework Agreement or a Call-Off Contract following a Request for Information pursuant to **clause 18 (Freedom of Information) of the Framework Agreement** or **clause 15 (Freedom of Information) of the Call-Off Contract**.
    2. In this Schedule the Parties have sought to identify the Contractor's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
    3. Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.
    4. Without prejudice to DfE’s obligation to disclose Information in accordance with the FOIA and the EIR, DfE will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the Information listed below.

|  |  |  |
| --- | --- | --- |
| CONTRACTOR’S COMMERCIALLY SENSITIVE INFORMATION | DATE | DURATION OF CONFIDENTIALITY |
|  |  |  |

# FRAMEWORK AGREEMENT



# KEY PERFORMANCE INDICATORS

* + 1. The objectives of the Key Performance Indicators are to:
       1. ensure that the Services are of a consistently high quality and meet the requirements of DfE;
       2. provide a mechanism whereby DfE can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the Services; and
       3. incentivise the Contractor to meet the KPIs and to remedy any failure to meet the KPIs expeditiously.

**KEY PERFORMANCE INDICATORS (KPIs)**

* + 1. This **Schedule 13 (Key Performance Indicators)** and the relevant Engagement Letter sets out the KPIs against which the Contractor shall measure its performance.
    2. The Contractor shall monitor its performance against of each of the KPIs in each Month of the Framework Term (and in the case of any KPIs set out in an Engagement Letter in each Month of the Call-Off Contract Term) and send DfE a report detailing the KPIs which were achieved in accordance with the provisions of this **Schedule 13 (Key Performance Indicators)** and **Clause 24 (Reporting and Meetings)**.

**Lot 1 – Restructuring Services**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Service Area** | **KPI Description** | **Target** |
| Lot 1 - KPI 1 | Service Delivery | Availability within 24 Hours (where required) | 100% |
| Lot 1 - KPI 2 | Service Delivery | Contractor able to deliver services and deliverable/s in the timescale set out in the Engagement letter | 100% |
| Lot 1 - KPI 3 | Conflict of Interest | Ensuring all conflict of interest information is up to date and Authority notified of any changes within 72 hours | 100% |
| Lot 1 - KPI 4 | Cost | Contractor must deliver assignment within agreed Engagement Letter fee budget and any overrun payments are agreed with Authority in advance | 100% |
| Lot 1 - KPI 5 | Quality | Contractor able to deliver assignment within Engagement Letter specification requirements and to relevant legislation | 100% |
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|  |  |  |  |
| **SLA Reference** | **Service Area** | **SLA Description** | **Target** |
| Lot 1 - SLA 1 | Reporting | Monthly Framework reporting: submit a monthly report by the Tenth Business Day of the month, including any exception events within this report. | 100% - DfE Monitoring |
| Lot 1 - SLA 2 | Meetings | Attend Monthly Contractor Meetings - as required Attend development and operations meetings - as required | 100% - DfE Monitoring |
| Lot 1 - SLA 3 | Complaints | Ensure Complaints procedure is adhered to and Main management contact to report all complaints in writing to DfE within 3 business days | 100% - DfE Monitoring |

**Lot 3 – Audit and Assurance**

|  |  |  |  |
| --- | --- | --- | --- |
| **KPI Reference** | **Service Area** | **KPI Description** | **Target** |
| Lot 3 - KPI 1 | Service Delivery | Completion of working papers to the Authority's satisfactory standard or published assurance framework | 100% |
| Lot 3 - KPI 2 | Service Delivery | Contractor able to deliver services and deliverable/s in the timescale set out in the Engagement Letter | 100% |
| Lot 3 - KPI 3 | Conflict of Interest | Ensuring all conflict of interest information is up to date and Authority notified of any changes within 72 hours | 100% |
| Lot 3 - KPI 4 | Cost | Contractor must deliver assignment within agreed Engagement Letter fee budget and any overrun payments are agreed with Authority in advance | 100% |
| Lot 3 - KPI 5 | Quality | Contractor able to deliver assignment within Engagement Letter specification requirements and to relevant policy/guidance and quality | 100% |
|  |  |  |  |
| **SLA Reference** | **Service Area** | **SLA Description** | **Target** |
| Lot 3 - SLA 1 | Reporting | Monthly Framework reporting: submit a monthly report by the Tenth Business Day of the month, including any exception events within this report. | 100% - DfE Monitoring |
| Lot 3 - SLA 2 | Meetings | Attend Quarterly Contractor Meetings - as required Attend development and operations meetings - as required | 100% - DfE Monitoring |
| Lot 3 - SLA 3 | Complaints | Ensure complaints procedure is adhered to and Main management contact to report all complaints in writing to DfE within 3 business days | 100% - DfE Monitoring |