

**Document 3**

**Draft Contract**

**Forensic Script Examination**

**Contract Number STA 0121**

**Contents**

[1. Interpretation 5](#_Toc419716611)

[2. Commencement and Continuation 12](#_Toc419716612)

[3. Contractor's Obligations 12](#_Toc419716613)

[4. Department’s Obligations 12](#_Toc419716614)

[5. Changes to the Department's Requirements 12](#_Toc419716615)

[6. Management 12](#_Toc419716616)

[7. Contractor's Employees and Sub-Contractors 12](#_Toc419716617)

[8. Order of Precedence 13](#_Toc419716618)

[9. Warranty and Indemnity 13](#_Toc419716619)

[10. Termination 14](#_Toc419716620)

[11. Status of Contractor 15](#_Toc419716621)

[12. Confidentiality 15](#_Toc419716622)

[13. Freedom of Information 17](#_Toc419716623)

[14. Access and Information 18](#_Toc419716624)

[15. Transfer of Responsibility on Expiry or Termination 18](#_Toc419716625)

[16. Tax Indemnity 19](#_Toc419716626)

[17. Amendment, Variation and Change Control 20](#_Toc419716627)

[18. Assignment and Sub-contracting 20](#_Toc419716628)

[19. The Contract (Rights of Third Parties) Act 1999 20](#_Toc419716629)

[20. Waiver 20](#_Toc419716630)

[21. Notices 20](#_Toc419716631)

[22. Dispute resolution 21](#_Toc419716632)

[23. Discrimination 21](#_Toc419716633)

[24. Data Protection Act 21](#_Toc419716634)

[25. Departmental Security Standards 23](#_Toc419716635)

[26. Security Requirements 25](#_Toc419716636)

[27. Contractors co-operation with Departmental objectives 26](#_Toc419716637)

[28. Sustainable Considerations 26](#_Toc419716638)

[29. Contractor’s Standards 26](#_Toc419716639)

[30. Personnel Security Standard 26](#_Toc419716640)

[31. Supply Chain Rights 27](#_Toc419716641)

[32. Tax Compliance 28](#_Toc419716642)

[33. Safeguarding children and vulnerable adults 29](#_Toc419716643)

[34. Intellectual Property Rights and Copyright 29](#_Toc419716644)

[35. Disaster Recovery and Business Continuity 30](#_Toc419716645)

[36. Liability 31](#_Toc419716646)

[37. Law and Jurisdiction 32](#_Toc419716647)

[Schedule 1 – Services 34](#_Toc419716648)

[Schedule 2 - Charges and Payments 35](#_Toc419716649)

[Schedule 3 – Change Control Procedures 38](#_Toc419716650)

[Schedule 5 – Notified Sub-Contractors 41](#_Toc419716651)

[Schedule 6 – The Supplier’s Tender response 42](#_Toc419716652)

**CONTRACT FOR Forensic Script Examination**

**THIS CONTRACT IS DATED**

*Insert above, in manuscript, the date that the contract is signed.*

**Parties**

1. **The Secretary of State for Education whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT acting as part of the Crown (“the Department”); and**
2. *\*\*\*enter company name and registered number\*\*\** **whose registered office is at \*\*\***enter the full address**\*\*\* (“the Contractor”)**

**Recitals**

The Contractor has agreed to provide a Maladministration script investigation on the terms and conditions set out in this Contract.

The Department's reference number for this Contract is **STA 0121**.

1. Interpretation
	1. In this Contract the following words shall mean:-

|  |  |
| --- | --- |
|  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; |
| Central Government Body | means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:(a) Government Department;(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);(c) Non-Ministerial Department; or(d) Executive Agency; |
| CESG | is the UK government’s National Technical Authority for Information Assurance. The website is <http://www.cesg.gov.uk/Pages/homepage.aspx>  |
| Charges | the charges for the provision of the Services set out in and derived in accordance with schedule 2, including any Milestone Payment, Stage Payment or Service Charge; |
| Confidential Information | the Department's Confidential Information and/or the Contractor's Confidential Information;  |
| Contract Manager | \*\*\**name and full address of the Department's Contract manager*\*\*\* |
| Contractor’s Contract Manager | *\*\*\* name of the Contractors Contract Manager\*\*\** |
|  Contracting Department | any contracting Department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Department; |
| Contractor Personnel | all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor; |
| Control | means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly; |
| Copyright | means any and all copyright, design right (as defined by the Act) and all other rights of a like nature which may, during the course of this Contract, come into existence in or in relation to any Work (or any part thereof); |
| Crown and/or Her Majesty | Both mean Queen Elizabeth II and any successor to Her Majesty; |
| Crown Body | any department, office or agency of the Crown; |
| Data | shall have the meaning given to those terms by the DPA; |
| Data Controller | shall have the meaning given to those terms by the DPA; |
| Data Processor | shall have the meaning given to those terms by the DPA; |
| Data Subject | shall have the meaning given to those terms by the DPA; |
| 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 statement of the relevant party, its employees, servants, agents or Sub‑contractors in connection with or in relation to the subject-matter of this Contract and in respect of which such party is liable to the other; |
| Departmental Assets | Includes but not limited to Departmental premises, IT systems and information with a classification up to confidential. |
| Departmental Security Standards | means the Department’s specification for security that the Contractor is required to deliver. |
| Department’s Data | (a) 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, 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; |
| Department’s Confidential Information | all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Department, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential; |
| DPA | the Data Protection Act 1998; |
| DOTAS | the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992. |
| Environmental Information Regulations | the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations; |
| FOIA | the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation; |
| Force Majeure Event | any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor, the Contractor Personnel or any other failure in the Contractor or the Sub-contractor's supply chain; |
| General Anti-Abuse Rule | (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions. |
| Good Industry 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 | 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. |
| Halifax Abuse Principle | the principle explained in the CJEU Case C-255/02 Halifax and others. |
| Her Majesty's Government | means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant or officer of such Government |
| ICT | information and communications technology; |
| ICT Environment | the Department’s system and the Contractor system; |
| Information | has the meaning given under section 84 of the Freedom of Information Act 2000;  |
| Insolvency Event | the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity:the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;the appointment of an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the entity's undertaking, assets, rights or revenue;the entity entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors;the entity being unable to pay its debts or being [capable of being] deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; orthe entity entering into any arrangement, compromise or compromise or composition in satisfaction of its debts with its creditors;however, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event; amalgamation shall not amount to an Insolvency Event; |
| Intellectual Property Rights | means patents, trademarks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, know-how, rights protecting databases, trade or business names and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom); |
| IT Security Health Check | means an assessment to identify vulnerabilities in IT systems and networks which may compromise the confidentiality, integrity or availability of information held on that IT system. |
| Key Sub-contract | means each Sub-contract with a Key Sub-Contractor;  |
| Key Sub-contractor | (a)       each of the Sub-contractors listed in schedule 5 (Notified Sub-contractors);(b)        any Sub-contract with a Sub-Contractor replacing any Key Sub-Contractor listed in schedule 5 (Notified Sub-Contractors); (c)        any Sub-contractor which in the opinion of the Department performs a business critical role in the provision of the Services; (d)       any Sub-contractor with a Sub-contract with a contract value in excess of 10% of the aggregate Charges; |
| 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;   |
| Occasion of Tax Non-Compliance  | (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion. |
| Personal Data | shall have the same meaning as set out in the DPA; |
| Personnel Security Standard | a government wide requirement including checks on identity, employment history, nationality and immigration status and the declaration of unspent criminal records. |
| Process | shall have the same meaning as set out in the Data Protection Act 1998; |
| Processing | shall have the same meaning as set out in the Data Protection Act 1998; |
| Property | means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract. |
| Regulated Activity | In relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.In relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006. |
| Regulatory Bodies | those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Department and **"Regulatory Body"** shall be construed accordingly. |
| Relevant Tax Authority | HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established. |
| Request for Information | a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations; |
| Required Action | has the meaning given in Clause 31 (Step-In Rights); |
| Security Plan | the security plan agreed between the Department and Contractor and included as a schedule (Security Requirements) to the contract; |
| Security Policy | the Department’s security policy annexed to the Security Requirements and Plan schedule as updated from time to time; |
| SPF | means the Government’s Security Policy Framework |
| Sensitive Personal Data | the meaning given to that term by the DPA; |
| Services | the services to be performed by the Contractor as described in Schedule 1; |
| SME | means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and any subsequent revisions; |
| Sub-contract | any contract or agreement or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof; |
| Sub-contractor | the third party with whom the Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents; |
| Working Day | any day other than a Saturday, Sunday or public holiday in England and Wales. |
|  |  |

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

 The Contractor shall commence the Services on 31st July 2015 (“Commencement Date”) and, subject to Clause 10.1 shall complete the Services on or before 30th January 2016.

 ***[Note to bidders: exact dates depend upon when the contract is signed but in any event, this is a 6 month contract.]***

1. Contractor's Obligations
	1. The Contractor shall promptly and efficiently complete the Services in accordance with the provisions set out in Schedule 1.
	2. The Contractor shall comply with the accounting and information provisions of Schedule 2.
	3. The Contractor shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.
2. Department’s Obligations

 The Department will comply with the payment provisions of Schedule 2 provided that the Department has received full and accurate information and documentation as required by Schedule 2 to be submitted by the Contractor for work completed to the satisfaction of the Department.

1. Changes to the Department's Requirements
	1. The Department shall notify the Contractor of any material change to the Department's requirement under this Contract.
	2. The Contractor shall use its best endeavours to accommodate any changes to the needs and requirements of the Department provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs to be agreed between the parties in writing.
2. Management
	1. The Contractor shall promptly comply with all reasonable requests or directions of the Contract Manager in respect of the Services.
	2. The Contractor shall address any enquiries about procedural or contractual matters in writing to the Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.
3. Contractor's Employees and Sub-Contractors
	1. Where the Contractor enters into a contract with a supplier or contractor for the purpose of performing its obligations under the Contract (the “**Sub-contractor**”) it shall ensure prompt payment in accordance with this Clause 7.1. Unless otherwise agreed by the Department in writing, the Contractor shall ensure that any contract requiring payment to a Sub-contractor shall provide for undisputed sums due to the Sub-contractor to be made within a specified period from the receipt of a valid invoice not exceeding:
		1. 10 days, where the Sub-contractor is an SME; or
		2. 30 days either, where the sub-contractor is not an SME, or both the Contractor and the Sub-contractor are SMEs,

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

* 1. The Department shall be entitled to withhold payment due under Clause 7.1 as long as the Contractor, in the Department’s reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with Clause 7.1. For the avoidance of doubt the Department shall not be liable to pay any interest or penalty in withholding such payment.
	2. The Contractor shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in all respects to perform the Services.
	3. The Contractor shall immediately notify the Department if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.
	4. The Contractor, its employees and sub-contractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
	5. The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Department’s reasonable security requirements as required from time to time.
1. Order of Precedence
	1. If there is any conflict between different parts of the Contract the conflict shall be resolved in accordance with the following order of precedence:
		1. the body of the Contract;
		2. Schedules 1 to 5; and
		3. Schedule 6.
2. Warranty and Indemnity
	1. The Contractor warrants to the Department that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Department to expect in all the circumstances. The Department will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.
	2. Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Contract then the Department shall be entitled, where appropriate to:
		1. require the Contractor promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or
		2. assess the cost of remedying the failure (“the Assessed Cost”) and to deduct from any sums due to the Contractor the Assessed Cost for the period that such failure continues.
	3. The Contractor shall be liable for and shall indemnify the Department in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Department or otherwise arising out of or in the course of or caused by the provision of the Services.
	4. The Contractor shall be liable for and shall indemnify the Department against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Contract or otherwise through the default of the Contractor
	5. All property of the Contractor whilst on the Department's premises shall be there at the risk of the Contractor and the Department shall accept no liability for any loss or damage howsoever occurring to it.
	6. The Contractor shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. The Contractor shall upon request produce to the Department, its policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.
3. Termination
	1. This Contract may be terminated by either party giving to the other party at least 30 days’ notice in writing.
	2. In the event of any breach of this Contract by either party, the other party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the party not in breach may terminate this Contract with immediate effect by notice in writing.
	3. In the event of a material breach of this Contract by either party, the other party may terminate this Contract with immediate effect by notice in writing.
	4. This Contract may be terminated by the Department with immediate effect by notice in writing if at any time:-
		1. the Contractor passes a resolution that it be wound-up or that an application be made for an administration order or the Contractor applies to enter into a voluntary arrangement with its creditors;
		2. a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Contractor's property, assets or any part thereof;
		3. the court orders that the Contractor be wound-up or a receiver of all or any part of the Contractor's assets be appointed;
		4. the Contractor is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;
		5. there is a change in the legal or beneficial ownership of 50% or more of the Contractor's share capital issued at the date of this Contract or there is a change in the control of the Contractor, unless the Contractor has previously notified the Department in writing. For the purpose of this Clause 10.4.5 “control” means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power;
		6. the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct;
		7. the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;
		8. the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/their obligations relating to the payment of Social Security contributions;
		9. the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/their obligations relating to payment of taxes; or
		10. the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Contract.
	5. Nothing in this Clause 10 shall affect the coming into, or continuance in force of, any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.
4. Status of Contractor
	1. In carrying out its obligations under this Contract the Contractor agrees that it will be acting as principal and not as the agent of the Department.
	2. The Contractor shall not say or do anything that may lead any other person to believe that the Contractor is acting as the agent of the Department.
5. Confidentiality
	1. Except to the extent set out in this Clause 12 or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
		1. treat the other party's Confidential Information as confidential and safeguard it accordingly; and
		2. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
	2. Clause12 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, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 13 (Freedom of Information);
		2. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
		3. such information was obtained from a third party without obligation of confidentiality;
		4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
		5. it is independently developed without access to the other party's Confidential Information.
	3. The Contractor may only disclose the Department's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Project and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
	4. The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Department's Confidential Information received otherwise than for the purposes of this Contract.
	5. The Contractor shall ensure that their employees, servants or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.
	6. Nothing in this Contract shall prevent the Department from disclosing the Contractor's Confidential Information:
		1. on a confidential basis to any Central Government Body for any proper purpose of the Department or of the relevant Central Government Body;
		2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
		3. to the extent that the Department (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
		4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 12.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
		5. on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or
		6. on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.
	7. The Department shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause 12 is made aware of the Department's obligations of confidentiality.
	8. Nothing in this Clause 12 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
	9. The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
	10. Subject to Clause 12.9, the Contractor hereby gives its consent for the Department to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
	11. The Department may consult with the Contractor to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.
	12. The Contractor shall assist and cooperate with the Department to enable the Department to publish this Contract.
6. Freedom of Information
	1. The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department to enable the Department to comply with its information disclosure obligations.
	2. The Contractor shall and shall procure that its Sub-contractors shall:
		1. transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
		2. provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five Working Days (or such other period as the Department may specify) of the Department's request; and
		3. provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
	3. The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
	4. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Department.
	5. The Contractor acknowledges that (notwithstanding the provisions of Clause 13) the Department may, acting in accordance with the Ministry of Justice’s Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (**“the Code”**), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:
		1. in certain circumstances without consulting the Contractor; or
		2. following consultation with the Contractor and having taken their views into account;

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

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

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

1. Transfer of Responsibility on Expiry or Termination
	1. The Contractor shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.
	2. Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in the Schedule.
	3. The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility.
2. Tax Indemnity
	1. Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
	2. Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
	3. The Department may, at any time during the term of this Contract, ask the Contractor to provide information which demonstrates how the Contractor complies with Clauses 16.1 and 16.2 above or why they do not apply to it.
	4. A request under Clause 16.3 may specify the information which the Contractor must provide and the period within which that information must be provided.
	5. The Department may terminate this contract if-:
		1. in the case of a request mentioned in Clause 16.3 if the Contractor:
			1. fails to provide information in response to the request within a reasonable time, or
			2. provides information which is inadequate to demonstrate either how the Contractor complies with Clauses 16.1 and 16.2 or why they do not apply to it;
		2. in the case of a request mentioned in Clause 16.4, the Contractor fails to provide the specified information within the specified period, or
		3. it receives information which demonstrates that, at any time when Clauses 16.1 and 16.2 apply, the Contractor is not complying with them.
	6. The Department may supply any information which it receives under Clause 16.3 to the Commissioners of Her Majesty’s Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
	7. The Contractor warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.
	8. The Contractor will account to the appropriate authorities for any income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.
	9. The Contractor shall indemnify Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by Department in connection with any such assessment or claim.
	10. The Contractor authorises the Department to provide the HM Revenue and Customs and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not Department is obliged as a matter of law to comply with such request.
3. Amendment, Variation and Change Control

No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Contractor shall comply with any formal procedures for amending or varying contracts which the Department may have in place from time to time (“Change Control Procedures”). Change Control Procedures are given in Schedule 3.

1. Assignment and Sub-contracting

18.1 The benefit and burden of this Contract may not be assigned or sub-contracted in whole or in part by the Contractor without the prior written consent of the Department. Such consent may be given subject to any conditions which the Department considers necessary.

18.2 The Department may withdraw its consent to any Sub-contractor where it no longer has reasonable grounds to approve of the sub-contractor or the sub-contracting arrangement and where these grounds have been presented in writing to the Contractor.

18.3 The Contractor shall be responsible for the acts and/or omissions of its Sub-contractors as though they are its own.

18.4 If it is appropriate, the Contractor shall provide each Sub-contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.

1. The Contract (Rights of Third Parties) Act 1999

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

1. Waiver

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

1. Notices

 Any notices to be given under this Contract shall be delivered personally or sent by post or by facsimile transmission to the Contract Manager (in the case of the Department) or to the address set out in this Contract (in the case of the Contractor). Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, if sent by post, 48 hours after posting or, if sent by facsimile transmission, 12 hours after proper transmission.

1. Dispute resolution
	1. The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.
	2. Any dispute not capable of resolution by the parties in accordance with the terms of Clause 22 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution Model Mediation Procedure.
	3. No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.
2. Discrimination
	1. The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment and the delivery of the Services.
	2. The Contractor shall take all reasonable steps to secure the observance of Clause 23.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.
3. Data Protection Act
	1. With respect to the parties' rights and obligations under this Contract, the parties agree that the Department is the Data Controller and that the Contractor is the Data Processor.
	2. The Contractor shall:
		1. Process the Personal Data only in accordance with instructions from the Department (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Department to the Contractor during the period of the Contract);
		2. Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any Regulatory Body;
		3. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
		4. take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
		5. obtain prior written consent from the Department in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
		6. ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 24;
		7. ensure that Contractor Personnel do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Department;
		8. notify the Department within five Working Days if it receives:
			1. a request from a Data Subject to have access to that person's Personal Data; or
			2. a complaint or request relating to the Department's obligations under the DPA;
		9. provide the Department with full cooperation and assistance in relation to any complaint or request made, including by:
			1. providing the Department with full details of the complaint or request;
			2. complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Department's instructions;
			3. providing the Department with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Department); and
			4. providing the Department with any information requested by the Department;
		10. permit the Department or the Department’s representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Department to enable the Department to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
		11. provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Department); and
		12. not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Commencement Date, the Contractor (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:
			1. the Contractor shall submit a request for change to the Department which shall be dealt with in accordance with any Change Control Procedure
			2. the Contractor shall set out in its request for change details of the following:

(a) the Personal Data which will be Processed and/or transferred outside the European Economic Area;

(b) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;

(c) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and

(d) how the Contractor will ensure an adequate level of protection and adequate safeguards (in accordance with the DPA and in particular so as to ensure the Department’s compliance with the DPA) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;

* + - 1. in providing and evaluating the request for change, the parties shall ensure that they have regard to and comply with then-current Department, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and
			2. the Contractor shall comply with such other instructions and shall carry out such other actions as the Department may notify in writing, including:

(a) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) in this Contract or a separate data processing agreement between the parties; and

(b) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Authority on such terms as may be required by the Department, which the Contractor acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA).

* 1. The Contractor shall comply at all times with the DPA and shall not perform its obligations under this Contract in such a way as to cause the Department to breach any of its applicable obligations under the DPA.
1. Departmental Security Standards
	1. The Contractor shall comply with the Departmental Security Standards for Contractors which include but are not limited to this Clause 25.
	2. Where the Contractor Processes Personal Data on behalf of the Department or other data deemed sensitive by the Department or supply ICT products or services to, or on behalf of, the Department, the Contractor will be expected to have achieved, and be able to maintain, certification to the appropriate level, under the HMG Cyber Essentials Scheme. The certification must have a scope relevant to the Services. Alternatively, the Contractor must demonstrate, to the satisfaction of the Department, compliance with the requirements of the Cyber Essentials Scheme.
	3. The Contractor will be expected to have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the Services and the statement of applicability must be acceptable to the Department, including the application of an appropriate selection of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
	4. Subject to Clause 25.5, the Contractor will adopt the UK Government Security Classification Policy in respect of any Departmental Data being handled in the course of providing the Service, and will handle Departmental Data in accordance with its security classification and impact level.
	5. If the Contractor has an existing protective marking scheme it may continue to use this scheme 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 the Service must be segregated from other data on the Contractor’s own IT equipment to protect the Departmental Data and enable it to be securely deleted when required or, if this is not possible, the Contractor must ensure that it is stored in such a way that it is possible to securely delete Departmental Data in line with Clause 25.3.
	7. The Contractor will have in place and maintain physical (e.g. door access) and logical (e.g. identification and authentication) access controls to ensure only authorised access to Departmental Data.
	8. The Contractor will have in place and maintain technical safeguards to protect Departmental Data, including but not limited to: Good Industry Standard anti-virus and firewalls; up-to-date patches for operating system, network device, and application software.
	9. Any electronic transfer methods across public space or cyberspace must be protected via encryption which has been certified under a CESG (e.g. CAPS or CPA) or CESG-endorsed scheme, and the method shall be approved by the Department prior to being used for the transfer any Departmental Data.
	10. Any portable removable media (including but not constrained to pen drives, memory sticks, CDs, DVDs, PDPs, USB devices) which handle, store or process in any way Departmental Data to deliver and support the service, shall be under the configuration management of the (sub-) contractors providing the service, shall be necessary to deliver the service, and shall be full-disk encrypted using a product which has been certified under a CESG (e.g. CAPS or CPA) or CESG-endorsed scheme.
	11. All portable ICT devices (including but not limited to laptops, PDAs and smartphones) which handle, store or process in any way Departmental Data to deliver and support the Service, shall be under the configuration management of the Sub-contractors providing the Service, shall be necessary to deliver the service, and shall be full-disk encrypted using a product which has been certified under a CESG (e.g. CAPS or CPA) or CESG-endorsed scheme.
	12. Storage of Departmental Data on any portable devices or media shall be limited to the minimum required to deliver the Service.
	13. All paper holding Departmental Data must be securely protected whilst in the Contractor’s care and securely destroyed when no longer required using a cross-cutting shredder and/or a professional secure waste paper organisation.
	14. Paper documents containing Departmental Data shall be transmitted, both within and outside the Contractor’s premises in such a way as to make sure that no unauthorised person has access.
	15. At the end of the Contract or in the event of failure or replacement, all equipment holding Departmental Data must be securely cleansed or destroyed using a CESG approved product or method. Where this is not possible e.g. for legal or regulatory reasons, or technical reasons such as where there is storage area network or shared backup tapes, then the Contractor must protect the equipment until the time (which may be after the end of the Contract) when it can be securely cleansed or destroyed.
	16. Access by Contractor staff to Departmental Data shall be confined to those individuals who “need-to-know” and whose access is essential for the purpose of their duties. All employees with direct or indirect access to Departmental Data must be subject to pre-employment checks equivalent to or higher than the Baseline Personnel Security Standard which is available at the HMG website <https://www.gov.uk/government/publications/security-policy-framework> .
	17. All Contractor employees who handle Departmental Data shall have annual awareness training in protecting information.
	18. The Contractor shall have business continuity arrangements which are robust and which meet the ISO 22301 standard including IT disaster recovery plans and procedures to ensure that the delivery of the Services is not adversely affected in the event of an incident or crisis;
	19. Any non-compliances with these Departmental Security Standards or any suspected or actual breach of the confidentiality or integrity of Departmental Data being handled in the course of providing the Service, shall be immediately escalated to the Department by a method to be agreed by both parties.
	20. The Contractor shall ensure that any IT systems and hosting environments that are used to hold Departmental Data are at least annually subject to independent IT Security Health Checks, and that any findings relevant to the Service are shared with the Department and necessary remedial work carried out.
	21. The Contractor shall not store or host Departmental Data outside the UK or perform ICT management or support from outside the UK without prior agreement from the Department.
	22. The Department reserves the right to audit the Contractor with 24 hours’ notice in respect to the Contractor’s compliance with this Clause 25.
2. Security Requirements
	1. The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with the Security Plan.
	2. The Department shall notify the Contractor of any changes or proposed changes to the Security Plan.
	3. If the Contractor believes that a change or proposed change to the Security Plan will have a material and unavoidable cost implication to the Services it may submit a business case for any additional costs which shall include evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs.
	4. Until and/or unless a change to the charges is agreed by the Department pursuant to Clause 26.3 the Contractor shall continue to perform the Services in accordance with its existing obligations.

**Malicious Software**

* 1. The Contractor shall, as an enduring obligation throughout the period of the Contract, use the latest versions of anti-virus definitions available to check for and delete Malicious Software from the ICT Environment.
	2. Notwithstanding Clause 26.5, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Departmental Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
	3. Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 26.6 shall be borne by the parties as follows:
		1. by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Department’s Data (whilst the Department’s Data was under the control of the Contractor); and
		2. by the Department if the Malicious Software originates from the Department’s Software or the Department’s Data (whilst the Department’s Data was under the control of the Department).
1. Contractors co-operation with Departmental objectives
	1. In performing the Contract, the Contractor shall at all times co-operate with the Department to maximise value for money and sustainable delivery where it is not detrimental to the interests of either party to do so.
2. Sustainable Considerations
	1. The Contractor shall, in all its operations, including purchase of materials, goods and services, adopt a sound proactive sustainable approach, designed to minimise harm to the environment, society and economy and be able to provide proof of doing so to the Contract Manager on demand.
3. Contractor’s Standards
	1. The Contractor shall as far as practicable satisfy the Department that it operates to an acceptable standard such as BS 5750, BS EN ISO 9000 or an equivalent.
4. Personnel Security Standard
	1. The Contractor shall ensure that any personnel provided under this Contract including those of any Sub-contractors, who have unsupervised access to Departmental Assets meet the Personnel Security Standards and shall provide evidence that the checks have been performed on request.
	2. A breach of this Clause 30 shall entitle the Department to terminate the Contract immediately.
5. Supply Chain Rights

Sub-contracting

* 1. The Contractor shall not sub-contract any of its obligations under this Contract without the Department's prior written consent, which, subject to Clause 31.2, shall not be unreasonably withheld or delayed.
	2. The Department may withhold or delay its consent where it considers that:
		1. the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Department; and/or
		2. the proposed Sub-contractor is considered to be unreliable and/or has not provided reasonable services to its other customers; and/or
		3. the proposed Sub-contractor employs unfit persons.
	3. Subject to Clause 31.4, in making a request pursuant to Clause 31.1 the Contractor shall provide the Department with the following information about the proposed Sub-contractor:
		1. its name, registered office and company registration number (if applicable);
		2. a copy of the proposed Sub-contract;
		3. the purposes for which the proposed Sub-contractor will be employed, including the scope of any services to be provided by the proposed Sub-contractor;
		4. if relevant, confirmation that the Sub-contract requires the proposed Sub-contractor to comply with any relevant service levels;
		5. where the proposed Sub-contractor is also an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the Department that the proposed Sub-contract has been agreed on "arms-length" terms; and
		6. any further information reasonably requested by the Department.
	4. If the supply of information required pursuant to Clause 31.3 would amount to a breach of any rules and regulations of any exchange on which the shares of the Contractor are admitted for listing and/or trading, or any other rules or regulations with which the Contractor is obliged to comply as a result of that listing, the Contractor shall provide the Department with the relevant information to the fullest extent permitted by those rules and regulations.
	5. The Department has consented to the engagement of the Sub-contractors listed in Schedule 5 (Notified Sub-contractors) subject to the provision by the Contractor of the information listed in Clause 31.3 within 20 Working Days of the Commencement Date (or such other period that the Department may permit and notified to the Contractor in writing).
	6. The Contractor shall not use a pre-existing contract with any Sub-contractor, listed in Schedule 5 (Notified Sub-contractors), without the prior written consent of the Department, which shall not be unreasonably withheld or delayed.
	7. Except where the Department has given its prior written consent under Clause 31.6, the Contractor shall ensure that each Key Sub-contract shall include:
		1. a right under the Contracts (Rights of Third Parties) Act 1999 for the Department to enforce the terms of that Key Sub-contract as if it were the Contractor;
		2. a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Department;
		3. a provision requiring the Key Sub-contractor to enter into a direct confidentiality agreement with the Department on the same terms as set out in Clause 12 (Confidentiality);
		4. a provision requiring the Key Sub-contractor to comply with protection of data requirements pursuant to Clauses 12 (Confidentiality) and 24 (Data Protection Act); and
		5. a provision restricting the ability of the Key Sub-contractor to further Sub-contract elements of the Service without first seeking the consent of the Department;

**Termination of Sub-contracts**

* 1. The Contractor shall not terminate or materially amend the terms of any Sub-contract without the Department's prior written consent, which shall not be unreasonably withheld or delayed.
	2. The Department may require the Contractor to terminate a Key Sub-contract where the acts or omissions of the relevant Key Sub-contractor have given rise to the Department's right of termination.
1. Tax Compliance
	1. The Contractor represents and warrants that as at the date of this Contract, it has notified the Department in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance.
	2. If at any point during the term of the Contract, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
		1. notify the Department in writing of such fact within 5 Working Days of its occurrence; and
		2. promptly provide to the Department with:
			1. details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
			2. such other information in relation to the Occasion of Tax Non-Compliance as the Department may reasonably require.
	3. In the event that:
		1. the warranty given by the Contractor pursuant to Clause 32.1 is materially untrue; or
		2. the Contractor commits a material breach of its obligation to notify the Department of any Occasion of Tax Non-Compliance as required by Clause 32.2; or
		3. the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Department, are acceptable

the Department shall be entitled to terminate this Contract with immediate effect by notice in writing.

1. Safeguarding children and vulnerable adults
	1. The Contractor will put in place safeguards to protect children and vulnerable adults from a risk of significant harm which could arise from the performance of this Contract. The Contractor will agree these safeguards with the Department before commencing work on the Contract.
	2. In addition, the Contractor will carry out checks with the Disclosure and Barring Service (DBS checks) on all staff employed on the Contract in a Regulated Activity. Contractors must have a DBS check done every three years for each relevant member of staff for as long as this Contract applies. The DBS check must be completed before any of the Contractor’s employees work with children in Regulated Activity.
	3. The Contractor shall immediately notify the Department of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 33 have been met.
	4. The Contractor shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to children or vulnerable adults.
2. Intellectual Property Rights and Copyright
	1. The Contractor agrees that the Crown shall be legally and beneficially entitled to any and all Intellectual Property Rights and Copyright arising through the delivery of the Services and the Contractor hereby assigns to the Crown any and all residual title which it may have in any and all such Intellectual Property Rights and/or Copyright.
	2. The Contractor undertakes that it shall, from time to time, take all such steps and execute all such documents as the Crown or HMSO on its behalf may reasonably require to fully vest in the Crown any and all residual title, whether legal or beneficial, to the Intellectual Property Rights and/or Copyright.
	3. The Contractor now warrants to the Crown, HMSO and the Department (and to any assignees and licensees of each) that all works arising through the delivery of the Services will not infringe in whole or in part any Copyright or like right or any other Intellectual Property Right of any other person (wheresoever) and agrees to indemnify and hold harmless the Crown and/or the Department against any and all claims, demands, proceedings, expenses and losses, including any of a consequential nature, arising directly or indirectly out of any act of the foregoing in relation to any Work, where such act is or is alleged to be an infringement of a third party's Copyright or like right or other Intellectual Property Right (wheresoever).
	4. The warranty and indemnity contained in Clause 34.3 shall survive the termination of this Contract and shall exist for the life of the Copyright.
3. Disaster Recovery and Business Continuity

The Contractor shall have in place a business continuity management system that is compliant with HMG standards

(available at: <https://www.gov.uk/government/collections/government-security> )

and the SPF and that has been approved by the Department as set out in the project plan prepared as part of the Contractor’s mobilisation.

* 1. The Contractor hereby warrants that it has and shall continue to have in place up-to-date disaster recovery plans and business continuity plans (“Business Continuity Plans”):
		1. in accordance with the minimum standards prescribed from time to time by any Regulatory Authority;
		2. that are aligned with the Department’s disaster recovery and business continuity plans to the extent that such plans have been notified to the Contractor and to the extent that they relate to the Services, events that could affect the Services or failures in the Services; and
		3. without limiting the generality of the foregoing, in accordance with Good Industry Practice

and shall provide the Department with a copy of the Business Continuity Plans on request.

* 1. If a disaster or any event envisaged in the Business Continuity Plan occurs, the Contractor shall promptly notify the Department and implement the Business Continuity Plan as expeditiously as possible in the circumstances. In doing so, the Contractor shall not treat the Department any less favourably than any other customer of the Contractor.
	2. Without prejudice to the Contractor’s obligations under Clauses 13 and 24, the Contractor shall ensure that at least 2 back-up copies of the Departmental Data are made daily and held securely. The Contractor shall also ensure that at least one of the 2 copies of the Departmental Data is kept in a separate secure offsite physical location to the primary copy of the Departmental Data.
	3. The Contractor shall ensure that an appropriate media rotation procedure is followed, in line with ISO/IEC 27001 and Government security policies.
	4. The Contractor shall restore or recreate any Departmental Data that has been lost, corrupted or destroyed as a result of any Default by the Contractor. Such restoration or recreation shall be carried out promptly and at the Contractor’s own cost.
1. Liability
	1. Neither party shall be liable to the other party for any loss of profits, business, revenue or any indirect or consequential loss.
	2. The provisions of Clause 36.1 shall not limit the Department’s right to recover, where the Contractor and/or its Sub-contractors has committed a material breach for:
		1. direct loss of savings or anticipated savings;
		2. any losses, fines, expenses and damages imposed by, or incurred as a result of a ruling made by, a Regulatory Authority, including, but not limited to, such losses, fines, expenses and damages arising from the loss of the Department’s appointment as the body responsible for discharging any functions it is responsible for from time to time under the Education Act 1997;
		3. losses arising from any loss or corruption of data, including the costs of reconstituting any such lost or corrupted data;
		4. any ex gratia payments or gifts made by the Department, costs, claims, demands, expenses and damages of whatsoever nature arising in connection with any claim (or potential claim) made against the Department by schools or pupils or their teachers or parents (including legal costs associated with the defence or settlement of such claim);
		5. costs and expenses associated with the Department implementing its own disaster recovery plans and the implementation of the Business Continuity Plans;
		6. advertising costs or other communications costs (including costs of call-outs or other communications with schools, local authorities or pupils, or their parents or teachers) reasonably incurred to limit damage to the reputation or integrity of the Department or the Service arising out of a breach of this Contract by the Contractor; or
		7. any costs or expenses incurred in procuring an alternative service materially similar to the relevant Services.
	3. Subject to Clause 36.6 and to the maximum extent permitted by law, the Department’s aggregate liability, whether in contract, in tort (including negligence), under statute in connection with this Contract or the receipt of the relevant Services, shall in respect of all liabilities be limited to an amount equal to 20% of the Charges.
	4. Subject to Clause 36.6 the Contractor’s aggregate liability in connection with this Contract shall be limited to an amount equal to 125% of the Charges.
	5. In assessing whether a limit of liability set out in this Clause 36 has been met or exceeded, no account shall be taken of amounts recovered or recoverable in respect of the types of liability or losses referred to in Clause 36.6.
	6. The limits on liability set out in this Clause 36 shall not apply in respect of:
		1. any liability for death or personal injury resulting from a party’s negligence;
		2. any liability for fraud or fraudulent misrepresentation by a party;
		3. wilful default by the Contractor; or
		4. any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
2. Law and Jurisdiction

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

As witness the hands of the parties

|  |
| --- |
| **Authorised to sign for and on behalf of [Contractor’s name]:** |
| Signature: |  |
| Name in CAPITALS: |  |
| Position in Organisation: |  |
| Address in full: |  |
| Date: |  |

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

Schedule 1 – Services

**Deliverables and Equipment**

The Contractor shall provide all the deliverables and equipment necessary for the supply of the Services.

[Remainder of this Schedule to be populated from the successful tender]

Schedule 2 - Charges and Payments

1. **Charges**
	1. [to be populated from the successful tender]
2. **Schedule of Payments**
	1. The Schedule of Payments is shown in Annex 1 to this Schedule 2.
	2. Funds allocated to a particular expenditure heading in the Schedule of Payments are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only. The allocation of funds in the Schedule of Payments may not be altered except with the prior written consent of the Department.
	3. The Contractor shall maintain full and accurate accounts for the Service against the expenditure headings in the Payment Schedule. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Contract. Input and output VAT shall be included as separate items in such accounts.
	4. The Contractor shall permit duly authorised staff or agents of the Department or the National Audit Office to examine the accounts at any reasonable time and shall furnish oral or written explanations of the account if required. The Department reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Contractor has used the Department's resources in the performance of this Contract.
3. **Invoicing**
	1. Invoices shall be prepared by the Contractor monthly in arrears and shall be detailed against the expenditure headings set out in Schedule of Payments. The Contractor or its nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Contractor on the Service in accordance with the Contract and that the invoice does not include any costs being claimed from any other body or individual or from the Department within the terms of another contract.
	2. Invoices shall be sent, within 30 days of the end of the relevant month to SSCL Accounts Payable Team, Room 6124, Tomlinson House, Norcross, Blackpool FY5 3TA, quoting the Contract reference number. The Department undertakes to pay correctly submitted invoices within 10 days of receipt. The Department is obliged to pay invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Department. Any correctly submitted invoices that are not paid within 30 days may be subject to the provisions of the Late Payment of Commercial Debt (Interest) Act 1998. A correct invoice is one that: is delivered on time in accordance with the Contract; is for the correct sum; in respect of the Services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, Contractor name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated address.
	3. The Contractor shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in the Department's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Department shall only be liable to reimburse so much (if any) of the expenditure disallowed as, in the Department's reasonable opinion after consultation with the Contractor, would reasonably have been required for that purpose.
	4. If this Contract is terminated by the Department due to the Contractor’s insolvency or default at any time before completion of the Service, the Department shall only be liable under paragraph 2.1 of this Schedule 2 to reimburse eligible payments made by, or due to, the Contractor before the date of termination.
	5. On completion of the Service or on termination of this Contract, the Contractor shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Service. The final invoice shall be submitted not later than 30 days after the date of completion of the Service.
	6. The Department shall not be obliged to pay the final invoice until the Contractor has carried out all the elements of the Service specified as in Schedules 1.
	7. It shall be the responsibility of the Contractor to ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the Department all amounts due to be reimbursed under this Contract shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.

Schedule 2 – Annex 1 – Payment Schedule

[to be populated from the successful tender]

Schedule 3 – Change Control Procedures

1. **Principles**
	1. Where the Department or the Contractor sees a need to change the Services the Department may at any time request, and the Contractor may at any time recommend, such change only in accordance with the Change Control Procedure as set out in this Schedule 3.
	2. Neither the Department nor the Contractor shall unreasonably withhold its agreement to any change.
	3. Until such time as a change is made in accordance with the Change Control Procedure, the Contractor shall, unless otherwise agreed in writing, continue to supply the Services as if the request or recommendation had not been made.
	4. Any discussions which may take place between the Department and the Contractor in connection with a request or recommendation before the authorisation of a resultant change to the Services shall be without prejudice to the rights of either party.
	5. Any work undertaken by the Contractor, its Sub-contractors or agents which has not been authorised in advance by a change to the Services and which has not been otherwise agreed in accordance with the provisions of this Schedule 3 shall be undertaken entirely at the expense and liability of the Contractor.
2. **Procedures**
	1. Discussion between the Department and the Contractor concerning a change to the Services shall result in any one of the following:
		1. no further action being taken;
		2. a request to change the Services by the Department; or
		3. a recommendation to change the Services by the Contractor.
	2. Where a written request for an amendment is received from the Department, the Contractor shall, unless otherwise agreed, submit a Change Control Note (CCN) to the Department within two weeks of the date of the request.
	3. A recommendation to amend by the Contractor shall be submitted as a CCN direct to the Department at the time of such recommendation.
	4. A model CCN is provided at Annex 1 to this Schedule 3.
	5. Each CCN shall contain:
		1. the title of the change;
		2. the originator and date of the request or recommendation for the change;
		3. the reason for the change;
		4. full details of the change including any specifications;
		5. the price, if any, of the change;
		6. a timetable for implementation together with any proposals for acceptance of the change;
		7. a schedule of payments if appropriate;
		8. details of the likely impact, if any, of the change on other aspects of the Services;
		9. the date of expiry of validity of the CCN; and
		10. provision for signature by the Department and by the Contractor.
	6. For each CCN submitted the Department shall, within the period of the validity of the CCN:
		1. allocate a sequential number to the CCN;
		2. evaluate the CCN and, as appropriate;
		3. request further information;
			1. approve the CCN; or
			2. notify the Contractor of the rejection of the CCN; and
		4. arrange for two copies of an approved CCN to be signed by or on behalf of the Department and the Contractor.
	7. A CCN signed by both parties shall constitute an amendment to this Contract pursuant to Clause 17.

**Schedule 4 – Annex 1 – Change Control Note**

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

Schedule 5 – Notified Sub-Contractors

[to be populated from the successful tender]

Schedule 6 – The Supplier’s Tender response