

Framework Agreement

Item Writing Framework 2021 – 2024 (3+1)

Agreement Number STA 0246 - 02

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FRAMEWORK AGREEMENT FOR ITEM WRITINGSERVICES

This Framework Agreement is dated: **XX/XX/XXXX**

Parties

- 1) The Secretary of State for Education whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT ("the Department"); and
- 2) The Supplier ACER International United Kingdom Limited – Company number 5572704 - whose full registered address is 4 Darwin Court, Oxon Business Park, Shrewsbury, Shropshire, SY3 5AL, United Kingdom.

Background:

- (A) This Contract is for the provision of Item Writing services.
- (B) The Department shall order the Services by executing a Call-Off Contract with the Supplier.

Recitals

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

The Department's reference number for this Agreement is **STA 0246**.

1 Definition and Interpretation

1.1 In this Agreement, the following words shall mean:

Acceptance	has the meaning given in Clause 35 and " Accepted " shall be construed accordingly;
Affiliate	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
Agreement	this agreement comprising the recitals, clauses and schedules hereto, along with any Call-Off Contracts;
Best Endeavours	means taking all steps that a reasonable and prudent businessperson would take when acting in his/her own best interests;
BIL	business impact level assigned to information in accordance with the Security Policy Framework in order to determine the appropriate level of protection to be afforded to such information;
Brand Guidelines	the <i>NCA Style Guide</i>

Business Continuity Plan	has the meaning given to it in Clause Error! Reference source not found. 9;
Call-Off Contract	a document executed by the Parties for the provision and receipt of a Call-Off Service, in the form set out in Schedule 3;
Call-Off Service	the Services set out in a Call-Off Contract;
Call-Off Value	means the value specified in the Call-Off Contract;
Change	has the meaning given to it in Clause 15;
Change Control Procedure	the procedure for making Changes to either this Agreement or an existing Call-Off Service as specified in Clause 155;
Change of Control	when applied to any person shall be deemed to have occurred on each occasion on which any person other than those who Control such person on the Effective Date subsequently acquire Control of it;
Charges	the charges for the Services as set out Schedule 2 and this Agreement or as set out in a Call-Off Contract;
Confidential Information	the Department's Confidential Information and/or the Supplier's Confidential Information;
Contract Manager	the Department's representative who is the first point of contact for the Supplier and will oversee the day-to-day management of the Contract on behalf of the Department. The Department may change the identity of its Contract Manager at any time by written notice to the Supplier.
Contracting Department	any contracting department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Department;
Control	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 " are interpreted accordingly;
Controller	take the meanings given in the GDPR;
Copyright	any and all copyright, design right (as defined by the Copyright Act) and all other rights of a like nature which may, during the course of this Agreement, come into existence in or in relation to any Work;
Copyright Act	means the Copyright, Designs and Patents Act 1988;

Crown and/or Her Majesty	Queen Elizabeth II and any successor to Her Majesty;
Crown Body	any department, office or agency of the Crown;
Data	shall have the meanings given in the GDPR;
Data Controller	shall have the meanings given in the GDPR;
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
DPA 2018	Data Protection Act 2018;
Data Protection Impact Assessment	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Legislation	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; all applicable Law about the processing of personal data and privacy;
Data Protection Officer	take the meaning given in the GDPR;
Data Subject	take 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 by a Party of its obligations under this Agreement or of any warranty, condition or any other term or any default, act, omission, negligence, or misstatement of a Party or its employees, agents or subcontractors in connection with the subject matter of the Agreement;
Delay	the period of time by which the implementation of the Services by reference to the Implementation Plan is delayed arising from a failure to Achieve a Milestone;
Department's Confidential Information	all Personal Data and any information that relates to the business, affairs, developments, trade secrets, Know-how, personnel, and suppliers of the Department, including all Intellectual Property Rights, together with all information derived from any of the above, and any other

	information designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
Departmental Assets	Departmental Premises, IT systems and information with a classification up to confidential;
Departmental Security Standards	the Department's specification for security that the Supplier is required to deliver;
Departmental Data	all data or records of whatever nature and in whatever form: (i) supplied by or on behalf of the Department; or (ii) relating to the conduct of the tests, pupils, Markers, the Department's staff or otherwise relating to the operations or functions of the Department, or in relation to any Call-Off Contract or as created or processed as part of, or in connection with, the Services. For the avoidance of doubt, this excludes personal and sensitive information for, Supplier staff or other consultants used in the provision of the services;
Departmental Dependencies	in respect of a Call-Off Service, those activities specified in Schedule 3 (Departmental Dependencies) to be carried out by the Department or a Departmental Service Provider to facilitate the Supplier's provision of the Services;
Departmental Materials	all tests, test scripts, test items, test booklets and other project documentation delivered as part of the Services (including meeting minutes, project board reports and risk and issues logs) training materials, and other material of a similar nature produced by or on behalf of the Supplier for the Department, or in conjunction with the Department, under this Agreement (but excluding the Software);
Departmental Policies and Procedures	the National Curriculum Assessments Policy, as amended or replaced from time to time by the Department;
Departmental Premises	those premises which are owned, leased or occupied by the Department from time to time;
Departmental Security Policy	the Department's security policies and procedures as updated, amended or replaced from time to time by the Department;
Departmental Service Provider	has the meaning give in Clause 11;
Departmental Software	the source code and object code of software (and any additions, modifications or developments thereto, whether made before or after the Effective Date) which is: (i) owned by the Department as at the Effective Date or as at the effective date of a Call-Off Contract; or (ii)

	developed or procured for the Department as the subject of a Call-Off Contract;
Dispute	any dispute or disagreement between the Parties arising out of or in connection with this Agreement (including in connection with any Call-Off Contract), including any question regarding the existence, validity or termination of this Agreement or a Call-Off Contract;
EEA	European Economic Area;
Effective Date	the date of this Agreement;01/04/2021
EIR	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government department in relation to such regulations;
Exit Phase	in respect of the Agreement or a Call-Off Contract the period: (a) commencing on the day after the date on which the relevant Termination Notice (or any other notice given to terminate the Agreement or the Call-Off Contract) is served by either Party; and (b) ending on the date one month after the date of the termination of the Agreement or the Call-Off Contract (as appropriate);
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
Force Majeure Event	an act or event affecting the performance by a Party of its obligations hereunder: (a) arising from events beyond its reasonable control including disaster, fire, flood, pandemic, terrorist attack or an industrial dispute (other than one by the employees of the Supplier, its Group Companies or its Subcontractors and only where a substitute third party is not reasonably available); and (b) which could not have been avoided through the exercise of Good Industry Practice, provided that a Force Majeure Event shall not include any claim by a third party that any software, data or other materials provided by the Supplier or the Subcontractors infringes its Intellectual Property Rights;
General Anti-Abuse Rule	(a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs;

GDPR	the General Data Protection Regulation (<i>Regulation (EU) 2016/679</i>)
Good Industry Practice	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
Good Industry Standard	the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
Government	the government of the United Kingdom;
HMRC	Her Majesty's Revenue & Customs;
HMSO	Her Majesty's Stationery Office;
ICT	information and communications technology;
Information	as defined in section 84 of the FOIA;
Insolvency Event	the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity: (a) 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; (b) 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; (c) 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; (d) the entity being unable to pay its debts or being [capable of being] deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or (e) the entity entering into any arrangement, compromise or compromise or composition in satisfaction of its debts with its creditors;

	However, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event and amalgamation shall not amount to an Insolvency Event;
Insurance Policies	has the meaning given in Clause 255.3 (Insurance and Liability);
Intellectual Property Rights	means patents, trademarks, service marks, utility models, inventions, logos, (whether registrable or otherwise), applications for any of the foregoing, Copyright, domain names, Know-how, database rights, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
Key Employees	has the meaning given in Clause 17;
Key Milestone	in respect of a Call-Off Contract, an event or task, as described in the Call-Off Contract, which is expressed in the Call-Off Contract to be a Key Milestone;
Know- how	confidential and proprietary industrial and commercial information and techniques in any form including drawings, formulae, test results, reports, project reports and testing procedures, instruction and training manuals, tables of operating conditions, market forecasts, lists and particulars of the Department and suppliers;
LED	Law Enforcement Directive (Directive (EU) 2016/680);
Loss	any awards, claims, compensation, costs, damages, demands, expenses, fines, loss, order, penalty and payment made by way of settlement, of whatsoever nature;
Management Information	the operational management information and performance reports to be provided by the Supplier to the Department, as specified in Schedule 4 and/or any Call-Off Contract in force from time to time,
Milestone	an event or task as set out in any Call-off Contract as a milestone including any Key Milestone;
Milestone Date	the scheduled date for completion set against a Milestone, in a Call-Off Contract;
MoR	the best practice guidance for effective management of risk as issued and updated by the Government from time to time;

NICs	National Insurance Contributions;
Ofqual	the Office of the Qualifications and Examinations Regulator;
Personal Data	take the meanings given in the GDPR;
Personal Data Breach	shall have the meanings given in the GDPR;
Personnel	the Supplier's employees and agents, the Subcontractors and the employees, agents and subcontractors of the Subcontractors engaged in the provision of the Services;
Personnel Security Standard	a government wide requirement including checks on identity, employment history, nationality and immigration status and the declaration of unspent criminal records;
Processor	take the meaning given in the GDPR;
Process Document	a document setting out processes and procedures used in the delivery of the Call-Off Service, including interfaces with Subcontractors, the Departmental Service Providers, stakeholders and other relevant third parties;
Processing	shall have the meanings given in the GDPR;
Prohibited Act	means: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Department a financial or other advantage to: i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement; (c) an offence: i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act; ii) under legislation or common law concerning fraudulent acts; or iii) the defrauding, attempting to defraud or conspiring to defraud the Department;

	(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the United Kingdom;
Project Closure Report	has the meaning given in Clause 28.2.1;
Project Plan	a plan setting out the resources, tasks and timescales required to be performed to mobilise and deliver the Call-Off Contract together with any revisions the Supplier proposes to make to the Milestone Dates set out in the Call-Off Contract;
Property	the property, other than real property, issued or made available to the Supplier by the Department in connection with the Agreement;
Rate Card	the rate card for Personnel as set out in Schedule 2;
Regulations	any laws, regulations, regulatory constraints, obligations or rules (including binding codes of conduct and binding statements of principle incorporated and contained in such rules) applicable to the existence or operation of this Agreement or the provision of any part of the Services from time to time;
Regulatory Body	those Government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Department and "Regulatory Body" shall be construed accordingly;
Regulatory Change	has the meaning given in Clause 422;
Relevant Requirements	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
Request for Information	a request for information or an apparent request under FOIA or the EIR received by the Department, the Supplier, the Subcontractors or another relevant Regulatory Authority or public body (as defined by FOIA) or public authority (as defined by the Environmental Information Regulations 2004);
Security Plan	the Supplier's security plan prepared as part of their tender and included in Schedule 8 to the Agreement;
Security Policy	the Department's Security Standards and Plan as updated from time to time;

Service Commencement Date	in relation to a Call-Off Contract, the date on which the relevant Call-Off Service shall commence, as specified in the Call-Off Contract;
Service Element	part of a Call-Off Service as identified in a Call-Off Contract and described in more detail in Schedule 1;
Services	the services the Supplier agrees to provide under this Agreement from time to time including any Call-Off Services;
SME	a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC;
Software	the Supplier Software, the Third Party Software and the Departmental Software;
Source Code	the computer programming code of the Software, in human-readable form and in such form that can be compiled or interpreted into equivalent object code, together with all technical information and documentation (including all specifications, input and output formats, algorithms and file structures) that are necessary for the use, reproduction, modification and enhancement of such software or that have been used for such purposes;
SPF	Government Security Policy Framework which sets out the standards, best practice guidelines and approaches that are required to protect UK government assets.
Subcontract	any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof;
Subcontractor	a subcontractor of the Supplier (including any of the Supplier's Group Companies) which performs part of the Service;
Successor Operator	an entity (which may include the Department) succeeding the Supplier in the provision or operation of services similar to the Services or any part thereof (including any Call-Off Service);
Supplier Personnel	all employees, agents and contractors of the Supplier and/or of any Subcontractor;
Supplier Software	the software used in the provision of the Services other than the Third Party Software and the Departmental Software, specifically excludes pre-existing Intellectual Property Rights and software including but not limited to Suppliers Register of Schools, Survey Admin System, School Portal and on-screen marking system;

Supplier's Contract Manager	
Supplier System	the computer systems used by or on behalf of the Supplier to provide all or part of the Services including the Software but excluding the Departmental System;
Term	the period from the Effective Date until the termination or expiry of the Agreement; 01/04/2021 – 31/03/2024 with the option to extend a further year;
Termination Notice	a notice in writing, served by one Party on the other, in accordance with this Agreement to terminate this Agreement, a Call-Off Contract or a Service Element;
Territory	the United Kingdom (and the locations, to the extent outside the United Kingdom, of the British Forces Posted Overseas schools), it being understood that, insofar as the Services include the operation and maintenance of a website on which the Trade Marks are mentioned, no territorial restriction shall apply to the use of the Trade Marks on such website;
Third Party Software	any software used in the provision of the Services, the Intellectual Property Rights in which are owned by a third party;
Time and Materials Basis	that the cost of a service or activity shall be the sum of: (i) the labour costs of the Personnel engaged in the performance of that service or activity. Such sum shall be equal to the amount of time directly and necessarily spent by such Personnel in the performance of such service or activity at the rates set out in the Rate Card (or in the absence of an appropriate rate in the Rate Card, at cost); plus (i) any payments to third parties directly and necessarily made in the performance of such service or activity. Such payments to be passed through without the addition of any margin or overhead by the Supplier and with the benefit of any volume or other related discount provided that: the Supplier must use Best Endeavours to use efficiently all resources chargeable to the Department in respect of that service or activity so as to minimise the cost to the Department;
Trade Marks	the registered and unregistered trademarks, names, logos and devices, brief particulars of which are set out in the Brand Guidelines or specified in writing by the Department from time to time;
VAT	value added tax and any tax of a similar fiscal nature (including, without limitation, any tax of a similar fiscal

- nature imposed in addition to, or as a replacement for, such tax);
- Virus** any “back door”, “time bomb”, “trojan horse”, “worm”, “drop dead device”, “virus” or other computer software routine intended or designed to:
- (i) disable, damage, erase, disrupt or impair the normal operation of; or
 - (i) provide unauthorised access to or modification to,
- computer systems or any software or information stored on those computer systems
- Work** any and all works including but not limited to literary, dramatic, musical or artistic works, sound recordings, films, broadcasts or cable programmes, typographical arrangements and designs (as the same are defined in the Copyright Act) which are created from time to time during the course of this Agreement by the Supplier or by or together with others at the Supplier's request or on its behalf and where such works directly relate to or are created in respect of the performance of this Agreement or any part of it;
- Working Day** a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.
- 1.2 References to “Clauses” and “Schedules” mean clauses of and schedules to this Agreement. The provisions of the Schedules shall be binding on the parties as if set out in full in this Agreement.
- 1.3 References to the singular include the plural and vice versa and references to any gender include both genders. References to a person include any individual, firm, unincorporated association or body corporate.
- 1.4 References to the “Parties” means the Department and the Supplier and their respective successors and permitted assigns. References to a “third party” or “third parties” shall not include the Group Companies of the Supplier.
- 1.5 If there is any conflict or ambiguity between any sections of the Agreement, the sections shall be applied in the following order of precedence: the Clauses; the Schedules; the Call-Off Contracts; and any other document referred to in this Agreement.
- 1.6 If the Supplier becomes aware of a conflict between a Call-Off Contract and any other part of this Agreement, the Supplier shall promptly notify the Department of such conflict and shall follow the Department's instructions in connection with such conflict.
- 2 Supplier Appointment**
- 2.1 The Supplier is appointed by the Department under this Agreement as a potential, non-exclusive provider of the Services and any other Item Writing Services the Department may wish to purchase from time to time. Nothing in this Agreement prevents the Department or any persons connected with it from acquiring the Services or services similar to the Services from another supplier during the Term or from performing any such services for itself internally.

3 Status of Supplier

- 3.1 In carrying out its obligations under this Agreement the Supplier is acting as principal and not as the agent of the Department.
- 3.2 The Supplier shall not say or do anything that may lead any person to believe that the Supplier is acting as the agent of the Department.

4 Assignment

- 4.1 Neither Party shall assign, novate or otherwise transfer any of its rights or obligations under this Agreement (including in respect of a Call-Off Contract) to any person without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed; except that the Department shall be entitled to assign or novate this Agreement (or a Call-Off Contract) to a body or bodies which succeeds the Department or undertakes equivalent functions or duties to the Department in accordance with an Act of Parliament, a direction of a Government body or a Regulatory Authority's request, without the Supplier's consent and the Supplier shall enter into such documents as are reasonably necessary for this purpose.

5 Third Party Rights

- 5.1 This Agreement does not create any right or benefit enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999) except for: (i) a person who is a permitted successor or assignee of the rights or benefits of a Party that may enforce such rights or benefits; and (ii) a Successor Operator.

6 Framework Commencement and Term

- 6.1 This Agreement commences on the Effective Date and ends 3years after the Effective Date unless terminated earlier in accordance with its terms or the option to extend is progressed

7 Call-Off Contracts – Execution, Commencement and Term

- 7.1 If the Parties agree that a Call-Off Service shall be provided they shall execute a Call-Off Contract in respect of that Call-Off Service.
- 7.2 Call-Off Contracts shall commence on the Service Commencement Date and shall expire on the date specified in the Call-Off Contract.

8 Services

- 8.1 The Supplier shall provide the Services in accordance with this Agreement and as described in the Schedules. The Services shall be deemed to include all activities, functions and services necessary for the proper provision of, ancillary to or customarily included as part of services similar to the Services.
- 8.2 The Supplier shall ensure that each Call-Off Service conforms to the relevant description set out in the Call-Off Contract and Schedule 1.

9 Supplier's Obligations

- 9.1 The Supplier shall perform all of its obligations under this Agreement:
- 9.1.1 in accordance with any PIDs, Project Plans, Process Documents and Security Plans approved by the Department;
 - 9.1.2 in accordance with the Departmental Policies and Procedures and Good Industry Practice;

9.1.3 substantially in accordance with appropriate project management standards; and

9.1.4 in accordance with the Department's reasonable instructions, as contained in the Call-Off Contracts.

9.2 The Supplier 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.

10 Department's Obligations

10.1 The Department shall comply with the payment provisions of Schedule 2 provided that the Department has received full and accurate information and documentation as required by Schedule 2 from the Supplier for work completed to the satisfaction of the Department.

11 Departmental Dependencies

11.1 The Supplier's performance of the Services may depend on the Department's performance of the Departmental Dependencies and the Department's other obligations under the Agreement. Therefore the Supplier shall not be liable for:

11.1.1 any failure to comply with the Agreement to the extent that such failure is directly caused by a failure by the Department to comply with its obligations under this Agreement or to perform a Departmental Dependency; or

11.1.2 any delay in fulfilling its obligations under the Agreement to the extent that such failure is directly caused by a failure by the Department to comply with its obligations under the Agreement or to perform a Departmental Dependency

(each a "**Department Delay**")

provided always that such relief shall only be granted if the Supplier: (i) has given a notice to the Department promptly and in any event within 3 Working Days, upon becoming aware of such failure to comply or delay (as applicable); and (ii) uses Best Endeavours in accordance with Good Industry Practice to make good any such failure or make up time lost as a result of that delay (as applicable).

12 Cooperation

12.1 The Supplier shall be open and co-operative and provide reasonable assistance to Regulatory Bodies, test development agencies and any third party providing services to the Department (including services similar to or the same as the Services) or any third party to whom the Department subcontracts or delegates any of its rights and obligations under this Agreement, or any other activities it undertakes as part of its business from time to time (each such third party being a "**Departmental Service Provider**"). This assistance shall include:

12.1.1 providing such information about the manner in which the Services are provided as is reasonably necessary for the Departmental Service Providers to provide their services to the Department or carrying out such activities as have been delegated to it by the Department;

12.1.2 making available to, or accepting information from the Departmental Service Providers and Regulatory Bodies; and

- 12.1.3 meeting the Department, Ofqual and other Regulatory Bodies and the Departmental Service Providers to discuss the Services and the services provided by third parties.

13 Changes to the Department's Requirements

- 13.1 The Department shall notify the Supplier of any change to the Department's requirement under this Agreement.
- 13.2 The Supplier shall use Best Endeavours to accommodate any changes to the needs and requirements of the Department provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs to be agreed between the Parties in writing.

14 Amendment and variation

- 14.1 No amendment or variation to this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the Parties. The Supplier shall comply with any formal procedures for amending or varying agreements which the Department may have in place from time to time.

15 Change Control Procedures

- 15.1 If either Party wishes to change this Agreement including the modification of an existing Call-Off Contract the provisions set out in Schedule 5 shall apply in respect of that change.

16 Suppliers Employees and Sub-Contractors

- 16.1 Subject to Clause 16.2, the Supplier shall not, without the Department's prior written consent, subcontract any of its rights and obligations under this Agreement. The Supplier shall maintain full details of its Subcontractors (including the services provided and how they are managed) and shall make such details available to the Department upon request.
- 16.2 The Department's consent to a Subcontractor will not relieve the Supplier of its obligations to the Department under this Agreement and the Supplier shall be fully responsible to the Department for the acts or omissions of its Subcontractors. Any obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Subcontractors and Personnel also do, or refrain from doing, such act or thing.
- 16.3 The Supplier shall give the Department on request a list of all persons who are or may be at any time directly concerned with the performance of this Agreement specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the Department may reasonably require.
- 16.4 The Supplier shall immediately notify the Department if they have any concerns regarding the propriety of any of its Subcontractors in respect of the Services.
- 16.5 If the Department notifies the Supplier that it considers that an employee or Subcontractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Agreement, then the Supplier shall, as soon as is reasonably practicable, take all such steps as the Department considers necessary to remedy the situation or, if required by the Department, remove the employee or Subcontractor from providing the Services and shall provide a suitable replacement (at no cost to the Department).
- 16.6 The Supplier shall take all reasonable steps to avoid changes of employees or Subcontractors assigned to and accepted to provide the Services under the Agreement except if changes are unavoidable or temporary. The Supplier shall give at least one

month's written notice to the Contract Manager of proposals to change Key Employees or Subcontractors.

16.7 The Supplier shall use all reasonable endeavours to ensure that all its employees and Subcontractors who are not EU citizens are legally entitled to be resident in the UK and have a work permit, where applicable.

16.8 Where the Supplier enters into a contract with a Subcontractor for the purpose of performing its obligations under the Agreement it shall ensure prompt payment in accordance with this Clause 16.8. Unless otherwise agreed by the Department in writing, the Supplier shall ensure that any contract requiring payment to a Subcontractor shall provide for undisputed sums due to the Subcontractor to be made within:

16.8.1 10 days, where the Subcontractor is an SME; or

16.8.2 30 days either, where the Subcontractor is not an SME, or both the Supplier and the Subcontractor are SMEs.

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

16.10 The Department shall be entitled to withhold payment due to the Supplier if, in the Department's reasonable opinion, the Supplier has failed to comply with its obligations to pay any Subcontractors in accordance with Clause 16.8 and the Department shall not be liable to pay any interest or penalty in withholding such payment. .

16.11 The Supplier, its employees and Subcontractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.

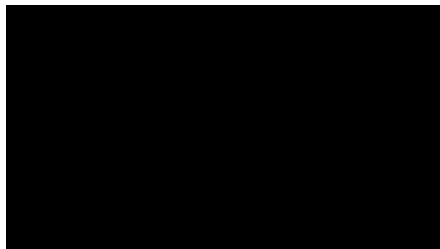
16.12 The Supplier shall ensure the security of all the Property whilst in its possession in accordance with the Department's reasonable security requirements as required from time to time.

17 Personnel

17.1 The Supplier shall ensure that it provides an adequate number of suitably qualified, skilled and experienced Personnel and shall ensure that they provide the Services with all due care and skill. In particular, all Personnel shall be fluent in English.

17.2 The Personnel shall not become employees of the Department and any instruction issued by the Department is issued to the Supplier and not directly to the Personnel.

17.3 As at the Effective Date, the Key Employees are:



along with any other employees identified as key in a Call-Off Contract (the "**Key Employees**"). The Supplier shall maintain up-to-date CVs of all Key Employees and shall make the CVs available to the Department on request. At the Department's reasonable request during the Term, the list of Key Employees in this Clause 17.3 shall be amended to include any other Personnel which the Department considers to be Key Employees.

- 17.4 If any of the Key Employees cease to be involved in the provision of the Services, the Supplier shall promptly nominate another employee of the Supplier to act as a Key Employee in place of that person. Prior to doing so, the Supplier shall:
- 17.4.1 ensure that the individual has the appropriate ability and qualifications;
 - 17.4.2 notify the Department of its intention to appoint that individual;
 - 17.4.3 introduce the individual to appropriate representatives of the Department; and
 - 17.4.4 provide the Department with such information about the individual as is reasonably requested by the Department.
- 17.5 If the Department reasonably and promptly objects in writing to the individual proposed under Clause 17.4, the Supplier shall not assign that individual to the position and shall propose to the Department another individual of suitable ability and qualifications. If the Department does not object to that individual, then they shall become a Key Employee.
- 17.6 The costs of training any replacement Key Employee or other handover costs shall be borne by the Supplier.
- 17.7 Mutually agreed. The Supplier and The Department shall not, and shall ensure that its Group Companies shall not, at any time during the Term or for 12 months after termination of this Agreement, solicit or endeavour to entice away from or discourage from being employed or hired by the Department any person who is an employee of the Department and who, to the Supplier's knowledge, is or was engaged in the Services in the previous 12 months whether or not such person would thereby commit a breach of his contract of service and save that this restriction shall not apply to any person who has received a notice of redundancy or dismissal. The restrictions in this Clause 17.7 shall not apply if a person who is or was an employee of the Department is employed as a result of a response by that person to a public advertisement.

18 Personnel Security Standard

- 18.1 The Supplier shall ensure that any Personnel who have unsupervised access to Departmental Assets meet the Personnel Security Standards and shall provide evidence that the checks have been performed on request, meeting Cabinet Office Security Policy framework, Baseline Personnel Security Standard (BPSS) <https://www.gov.uk/government/publications/security-policy-framework>.
- 18.2 A breach of this Clause 18 shall entitle the Department to terminate the Agreement immediately.

19 Branding of the Service

- 19.1 From the Effective Date the Department grants the Supplier a non-exclusive royalty-free licence to use the Trade Marks during the Term in the Territory on or in relation to the tests or related materials as is necessary for the provision of the Services.
- 19.2 The right to use the Trade Marks is conditional on the Supplier's compliance with the Department's Brand Guidelines (as amended by the Department from time to time).
- 19.3 The Supplier shall not affix any trademarks (other than the Trade Marks) or other promotional information to any of the Departmental Materials (including tests and any marketing materials) without the Department's prior written consent
- 19.4 The Supplier shall give the Department on request representative samples of any materials, including test materials and marketing materials, on or in respect of which the Trade Marks are used.

- 19.5 This Clause 19 and the licence contained herein is personal to the Supplier. The Supplier shall not assign, transfer, sub-license, mortgage, charge, or in any other way dispose of or purport to dispose of its rights or obligations under this Clause 19. Without prejudice to the generality of the foregoing, if the Supplier wishes a third party (a “**Sub-Licensee**”) to use the Trade Marks, the Supplier shall obtain the Department's prior written consent to such sub-licence, and if consent is given, shall procure that the Sub-Licensee shall enter into a licence directly with the Department containing provisions substantially the same as set out in this Clause 19 prior to the Sub-Licensee using the Trade Marks. The Supplier shall be responsible to the Department for the acts and omissions of its Sub-Licensees as if they were those of the Supplier.
- 19.6 Except as provided by this Clause 19, the Supplier shall not use the Trade Marks or the name of the Department or the Standards and Testing Agency.

20 Step in rights

- 20.1 Without prejudice to DFE's rights of termination under clause 26 the DFE may exercise one or more of the rights set out in this clause 20 (“**Step In Rights**”) if:
- 20.1.1 there is a Default by the Contractor which materially prevents or materially delays performance of the Services or any part of the Services;
 - 20.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;
 - 20.1.3 a Regulatory Body has advised the DFE that exercise by the DFE of its rights under this clause 20 is necessary;
 - 20.1.4 a serious risk exists to the health and safety of persons, property or the environment;
 - 20.1.5 it is necessary to discharge a statutory duty; or
 - 20.1.6 the Contractor becomes insolvent.
- 20.2 If the DFE has a Step In Right it may serve notice on the Supplier (a “**Step-In Notice**”) that it will take action under this clause 20 either itself or with the assistance of a third party. Third part introduction is subject to completion of a confidentiality agreement.
- 20.3 The Step-In Notice shall set out:
- 20.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);
 - 20.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor's Default;
 - 20.3.3 the date on which it wishes to commence the Required Action;
 - 20.3.4 the time period which it believes will be necessary for the Required Action
 - 20.3.5 whether the DFE will require access to the Contractor's premises; and

- 20.3.6 to the extent practicable, the effect the DFE anticipates the Required Action will have on the Contractor's obligations to provide the Services during the period that the Required Action is being taken.
- 20.4 Following service of a Step-In Notice, the DFE shall;
 - 20.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action.
 - 20.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor
 - 20.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the DFE is not assuming control; and
 - 20.4.4 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.
- 20.5 For as long as and to the extent that the Required Action continues:
 - 20.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
 - 20.5.2 the DFE shall pay the Contractor the Charges after subtracting any applicable Service Credits and the DFE's costs of taking the Required Action.
- 20.6 If the Contractor demonstrates to the DFE's reasonable satisfaction that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the DFE not taken the Required Action, the DFE may adjust the Charges.
- 20.7 Before ceasing to exercise its Step In Rights the DFE shall deliver a written notice to the Contractor (a "**Step-Out Notice**"), specifying:
 - 20.7.1 the Required Action it has taken; and
 - 20.7.2 the date on which the DFE plans to end the Required Action subject to the DFE being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 20.8.
- 20.8 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the date specified in clause 20.7.2, develop for the DFE's approval a draft plan relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of the Contract.
- 20.9 If the DFE does not approve the draft plan, it shall inform the Contractor of its reasons for not approving it and the Contractor shall then revise the draft plan taking those reasons into account and shall re-submit the revised plan to the DFE for approval. The DFE shall not withhold or delay its approval of the draft plan unreasonably.
- 20.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 20, provided that the DFE shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-In action taken by the DFE

under clauses 20.1.2 to 20.1.5 (insofar as the primary cause of the DFE serving the Step In Notice is identified as not being the result of a Contractor's Default).

21 Software, Data and Materials

- 21.1 The Department hereby grants to the Supplier a non-transferable, non-exclusive, royalty-free, licence to use, modify, adapt and enhance Departmental Software (and any associated documentation) for the Term, solely to the extent reasonably necessary for the provision of the Services in accordance with the terms of this Agreement. All Intellectual Property Rights in Departmental Software (including for the avoidance of doubt any modification, adaptation or enhancement thereto) shall remain with, or vest upon creation in, the Crown. At the Department's request, the Supplier shall execute, or procure from a relevant third party the execution of, any formal assignment or other document required to give effect to this Clause 21.1. The Supplier shall not obtain any right, title or interest to Departmental Software save as set out in this Clause 21.1. The Supplier shall provide a copy of the Source Code of Departmental Software and any associated documentation to the Department on request.
- 21.2 The Department hereby grants the Supplier a non-transferable, non-exclusive, royalty-free licence in relation to the Intellectual Property Rights in Departmental Data and Departmental Materials for the Term, solely to the extent reasonably necessary for the provision of the Services in accordance with the terms of this Agreement. All Intellectual Property Rights in Departmental Data and Departmental Materials shall remain with or vest in, the Crown. At the Department's request, the Supplier shall execute, or procure from a relevant third party the execution of, any formal assignment or other document required to give effect to this Clause 21.2. The Supplier shall not obtain any right, title or interest to Departmental Data or Departmental Materials save as set out in this Clause this 21.2.
- 21.3 The Supplier shall use best endeavours to take such steps as the Department may require in order to enforce the Department's rights in relation to one or all of the Departmental Data, Departmental Software and Departmental Materials against third parties provided that the Department shall (subject to the immediately following sentence) reimburse the Supplier in respect of any costs reasonably incurred by the Supplier in taking such steps. In respect of any request (or sequence of requests relating to the same subject-matter), the Supplier shall obtain the Department's written consent before incurring total costs of over £1,000 in complying with this Clause 21.3 and acknowledges that if it fails to do so, it shall not be entitled to invoice the Department for the amount of such costs being in excess of £1,000.
- 21.4 The Supplier hereby grants, or shall procure the grant to, the Department and any Departmental Service Provider, a non-transferable, non-exclusive, royalty-free licence to use the Intellectual Property Rights in the Supplier Software and the Third Party Software for the Term and the Exit Phase to the extent reasonably necessary for the Department to receive the Services in accordance with this Agreement.
- 21.5 The licence in Clause 21.4 shall not apply to the extent that the terms of any Third Party Software prevent it being licensed to a Departmental Service Provider. In such a circumstance the Supplier shall use Best Endeavours, at the Department's cost and request, to amend the terms of the relevant Third Party Software licence to permit use by a Departmental Service Provider.
- 21.6 The Supplier shall indemnify the Department against any reasonable costs, claims, demands, expenses and damages of whatsoever nature incurred by the Department, arising out of any claim that the use by the Department of any materials used or made available in the provision and receipt of the Services (the "**Indemnified Materials**")

infringes the Intellectual Property Rights of any third party. For the avoidance of doubt, this indemnity shall not apply to:

- 21.6.1 any infringement of Intellectual Property Rights which arises from the use of the Indemnified Materials by the Department other than in accordance with the Supplier's reasonable instructions; or
- 21.6.2 any adaptation, modification or enhancement made by the Department to the Indemnified Materials without the Supplier's approval.

22 Escrow

- 22.1 At the Department's request in a Call-Off Contract, the Supplier shall promptly ensure the Source Code for all the Departmental Software is placed in escrow with the Department's chosen escrow service provider (the "**Escrow Agent**") at the Department's cost.
- 22.2 The Supplier shall ensure that all Source Code placed in escrow under this Clause 22 shall be on the Escrow Agent's standard single licensee terms, with the Department as a licensee, save that the service of a Termination Notice shall be a release event for that Source Code.
- 22.3 The Supplier shall ensure that all Source Code placed into escrow under this Clause 22 is updated whenever there is a material change to that Source Code and, in any event, at least once every 6 months.
- 22.4 At the Department's request, the Escrow Agent shall verify the software and the Source Code. The Department shall pay the costs of such verification unless the verification determines that the software or the Source Code is incomplete or defective, in which case the Supplier shall: (a) reimburse the Department for the costs of that verification; and (b) ensure the prompt replacement of that material with the correct software and the Source Code that will pass the verification exercise.

23 Intellectual Property Rights

- 23.1 Subject to Clause 23.11, all Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patterns, models, designs or other material which is:
 - 23.1.1 furnished to or made available to the Supplier by or on behalf of the Department;
 - 23.1.2 prepared by or for the Supplier on behalf of the Department for use, or intended use, in relation to the performance by the Supplier of its obligations under the Agreement; or
 - 23.1.3 the result of any work done by the Supplier, the Personnel or any Subcontractor in relation to the provision of the Services (together with Clauses 23.3 and 23.4 the "**IP Materials**")

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

- 23.2 The Supplier hereby assigns to the Department, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clauses 23.1.2 and 23.1.3. This assignment shall take effect on the Effective Date or (in the case of rights arising after the Effective Date) as a present assignment of future

- rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier shall execute all documents and do all acts as are necessary to execute this assignment.
- 23.3 The Supplier shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Agreement or the performance of its obligations under the Agreement.
- 23.4 The Supplier shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Department a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Department an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Department to sub-license, transfer, novate or assign to other Contracting Departments, a Successor Operator or to any other third party supplying goods and/or services to the Department.
- 23.5 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Supplier shall, during and after the Term, indemnify and keep indemnified the Department and the Crown from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Department or the Crown may suffer or incur as a result of or in connection with any breach of this Clause 23.5, except to the extent that any such claim results directly from:
- 23.5.1 items or materials based upon designs supplied by the Department; or
- 23.5.2 the use of data supplied by the Department which is not required to be verified by the Supplier under any provision of the Agreement.
- 23.6 The Department shall notify the Supplier in writing of any claim or demand brought against the Department for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Supplier to the Department.
- 23.7 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Department or the Supplier) arising from the performance of the Supplier's obligations under the Contract ("**Third Party IP Claim**"), provided that the Supplier shall at all times:
- 23.7.1 consult the Department on all material issues which arise during the conduct of such litigation and negotiations;
- 23.7.2 take due and proper account of the interests of the Department; and
- 23.7.3 not settle or compromise any claim without the Department's approval (not to be unreasonably withheld or delayed).
- 23.8 The Department shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Supplier shall indemnify the Department for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not be required to indemnify the Department under this Clause 23.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in Clauses 23.5.1 or 23.5.2.

- 23.9 The Department shall not, without the Supplier's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- 23.10 If any Third Party IP Claim is made or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Department and, at its own expense and subject to the Department's approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Department under Clause 23.4) use its Best Endeavours to:
- 23.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
- 23.10.2 procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Department
- and if the Supplier is unable to comply with Clauses 23.10.1 or 23.10.2 within 20 Working Days of receipt by the Department of the Supplier's notification the Department may terminate the Agreement immediately by notice to the Supplier.
- 23.11 Any Intellectual Property Rights that the Supplier owned or developed prior to the Effective Date shall remain vested in the Supplier but the Supplier grants to the Department a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Effective Date and which the Department reasonably requires in order to exercise its rights under, and receive the benefit of, the Agreement (including, without limitation, the Services).
- 23.12 The Supplier warrants to the Crown, HMSO and the Department (and to any assignees and licensees of each) that any Works will not infringe in whole or in part any Copyright or like right or any Intellectual Property Right of any other person and shall indemnify Her Majesty and/or the Government against any and all claims, demands, proceedings, expenses and losses, including any of a consequential nature, arising directly or indirectly out of any act of the foregoing in relation to any Work, where such act is or is alleged to be an infringement of a third party's Copyright or like right or other Intellectual Property Right.
- 23.13 The warranty and indemnity contained in Clause 23.12 shall survive the termination of this Agreement and shall exist for the life of the Copyright.

24 Warranty and Indemnity

- 24.1 The Supplier warrants to the Department that the obligations of the Supplier under this Agreement will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Department to expect in all the circumstances. The Department relies on the Supplier's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Supplier in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Supplier as part of this Agreement. The Supplier warrants that any goods supplied by the Supplier forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.
- 24.2 Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Agreement the Department may:

- 24.2.1 require the Supplier promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or
- 24.2.2 assess the cost of remedying the failure (the “**Assessed Cost**”) and to deduct from any sums due to the Supplier the Assessed Cost for the period that such failure continues.
- 24.3 The Supplier shall be liable for and shall indemnify the Department in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Department or otherwise arising out of or in the course of or caused by the provision of the Services subject to clause 25.10 caused by the negligent provision of the services.
- 24.4 The Supplier shall be liable for and shall indemnify the Department against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Agreement or otherwise through the default of the Supplier subject to clause 25.10 caused by the negligent provision of the services.
- 24.5 All property of the Supplier whilst on the Department's premises shall be there at the risk of the Supplier and the Department shall accept no liability for any loss or damage howsoever occurring to it.
- 24.6 Each party will use all reasonable endeavours to mitigate any loss or damage suffered or incurred by it in connection with this Agreement
- 25 Insurance and Liability**
- 25.1 The Supplier shall take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under this Agreement or any Call-Off Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of this Agreement and any Call-Off Contract and for a minimum of 6 years following the termination or expiry of this Agreement or any Call-Off Contract, if later.
- 25.2 The Supplier shall hold employer's liability insurance of not less than £5 million in respect of all Supplier Personnel and such insurance shall be in accordance with any legal requirement from time to time in force.
- 25.3 The Supplier shall give the Department, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 25.4 If the Supplier does not give effect to and maintain the insurances required by the provisions of this Agreement, the Department may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 25.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Agreement or any Call-Off Contract.
- 25.6 The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person. Limitations of Liability

- 25.7 Subject to Clauses 25.8 and 25.13 but otherwise notwithstanding any other provision of this Agreement neither Party shall be liable to the other Party for any loss of profits, business, revenue or any indirect or consequential loss.
- 25.8 The provisions of Clause 25.7 shall not limit the Department's right to recover, where the Supplier and/or its Subcontractors has committed a material breach for:
- 25.8.1 direct loss of savings or anticipated savings;
 - 25.8.2 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;
 - 25.8.3 losses arising from any loss or corruption of data, including the costs of reconstituting any such lost or corrupted data;
 - 25.8.4 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);
 - 25.8.5 costs and expenses associated with the Department implementing its own disaster recovery plans and the implementation of the Business Continuity Plans;
 - 25.8.6 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 caused to the reputation or integrity of the Department or the tests arising out of a breach of this Agreement by the Supplier; or
 - 25.8.7 any costs or expenses incurred in procuring an alternative service materially similar to the relevant Services.
- 25.9 Subject to Clause 25.13 and to the maximum extent permitted by law, the Department's aggregate liability, whether in contract, in tort (including negligence), under statute in connection with a Call-Off Contract or the receipt of the relevant Call-Off Services, shall in respect of all liabilities be limited to an amount equal to 20% of the Call-Off Value.
- 25.10 Subject to Clause 25.13 the Supplier's aggregate liability in connection with a Call-Off Contract shall be limited to an amount equal to the lower of 125% of the Call-Off Value or £5,000,000 (five million pounds).
- 25.11 **Not used**
- 25.12 In assessing whether a limit of liability set out in this Clause 25 has been met or exceeded, no account shall be taken of amounts recovered or recoverable in respect of the types of liability or losses referred to in Clause 25.13.
- 25.13 The limits on liability set out in this Clause 25 shall not apply in respect of:
- 25.13.1 any liability for death or personal injury resulting from a Party's negligence;
 - 25.13.2 any liability for fraud or fraudulent misrepresentation by a Party;

25.13.3 wilful default by the Supplier; or

25.13.4 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.

26 Termination

26.1 The Department may at any time serve a Termination Notice on the Supplier terminating the Agreement or a Call-Off Contract. If the Department serves a Termination Notice under this Clause 26.1:

26.1.1 the Agreement or Call-Off Contract will terminate on the date specified in the Termination Notice; and

26.1.2 In the event that the Authority exercises its rights in accordance with clause 26.1, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of termination of the Contract or the relevant part if the date of termination is less than 90 days after the date of the Termination Notice.

26.1.3 The Authority's total liability under clause 26.1 shall be limited to the total price of the Contractor Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Contractor at the date of termination.

26.2 The Department may at any time serve a Termination Notice on the Supplier terminating all or part of the Agreement (including all or part of a Call-Off Contract or Service Element) if the Supplier commits:

26.2.1 a material Default or a series of Defaults the combination of which is material to its obligations under a Call-Off Contract and (if capable of remedy) the Supplier has failed to remedy the Default(s) within 30 days of receipt of written notice giving particulars of the Default(s) and requiring them to be remedied;

26.2.2 a Default or series of Defaults which results in a Regulatory Authority stating that it shall take action resulting in: (a) the loss of the Department's appointment as the body responsible for discharging any functions it is responsible for from time to time under the Education Act 1997; or (b) a significant fine; or

26.2.3 a Default or series of Defaults which has a material effect on the reputation of the Department or names under which the Department operates as a result of: (a) publications in national newspapers or websites of national newspapers; or (b) broadcasts on national radio or national television, that are materially factually correct as to the nature of the relevant Default(s) and such disclosure has not been made by a Government department, the Department, its employees, agents and subcontractors in breach of their obligations of confidentiality under this Agreement.

26.3 The Department may at any time serve a Termination Notice on the Supplier terminating all or part of the Agreement (including all or part of a Call-Off Contract or Service Element) if:

26.3.1 permitted by Clause 34.5;

- 26.3.2 there is a Change of Control of the Supplier and:
- 26.3.2.1 the Supplier fails to inform the Department within 10 Working Days prior to it taking place;
- 26.3.2.2 a Regulatory Authority objects to the Change of Control; or
- 26.3.3 the Supplier passes a resolution that it be wound-up or that an application be made for an administration order or the Supplier applies to enter into a voluntary arrangement with its creditors;
- 26.3.4 a receiver, liquidator, administrator, supervisor or administrative receiver is appointed in respect of the Supplier's property, assets or any part thereof;
- 26.3.5 a court orders that the Supplier is wound-up or a receiver of all or any part of the Supplier's assets be appointed;
- 26.3.6 the Supplier is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;
- 26.3.7 there is a change in the legal or beneficial ownership of 50% or more of the Supplier's share capital issued at the Effective Date unless the Supplier has previously notified the Department in writing. For the purpose of this Clause 26.3.7 "control" means the power of a person to secure that the affairs of the Supplier are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power;
- 26.3.8 the Supplier is convicted (or being a company, any officers or representatives of the Supplier are convicted) of a criminal offence related to the business or professional conduct;
- 26.3.9 the Supplier commits (or being a company, any officers or representatives of the Supplier commit) an act of grave misconduct in the course of the business;
- 26.3.10 the Supplier fails (or being a company, any officers or representatives of the Supplier fail) to fulfil its obligations relating to the payment of Social Security contributions;
- 26.3.11 the Supplier fails (or being a company, any officers or representatives of the Supplier fail) to fulfil its obligations relating to payment of taxes; or
- 26.3.12 the Supplier fails (or being a company, any officers or representatives of the Supplier fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Agreement.
- 26.4 Nothing in this Clause 26 shall affect any provision of this Agreement which is expressly or by implication intended to come into force or continue in force upon termination of this Agreement.
- 26.5 The Department shall pay the Supplier for all Call-Off Services accepted up to the date of termination and future costs committed to, provided that the Supplier shall use its Best Endeavours to mitigate such costs.
- 26.6 The Supplier may serve on the Department a Termination Notice to terminate the Agreement if the Department fails to pay an undisputed invoice and such invoice remains unpaid 60 days after receipt by the Department of a written notice requiring the

Department to pay such invoice and stating the Supplier's intention to terminate the Agreement (such notice to be delivered after the due date for payment of the invoice). If the Supplier serves a Termination Notice under this Clause 26.6, the Agreement shall terminate 3 months after the notice is served.

- 26.7 Termination or expiry of this Agreement shall not cause any Call-Off Contracts to terminate automatically. All Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the terms of this Agreement.
- 26.8 Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations of the Parties accrued under the Agreement prior to its termination or expiry.

27 Force Majeure

- 27.1 Neither Party shall be liable to the other for failure to comply with the Agreement to the extent caused by any Force Majeure Event subject to the Party being unable to comply with this Agreement (the “**Affected Party**”):

27.1.1 giving written notice to the other Party (the “**Other Party**”) as soon as reasonably practicable on becoming aware of the Force Majeure Event, such notice to contain the following information:

- 25.1.1.1 details of the Force Majeure Event that has occurred;
- 25.1.1.2 the date from which the event has prevented or hindered the Affected Party in the performance of its duties hereunder;
- 25.1.1.3 the duties hereunder so affected; and
- 25.1.1.4 its best estimate of the date upon which it will be able to resume performance of the affected duties hereunder;

27.1.2 continuing at all times to take such steps in accordance with Good Industry Practice to resume full performance of its obligations under this Agreement;

27.1.3 providing at reasonable intervals updated information to the Other Party on the status of the Force Majeure Event and the steps taken to resume full performance of its obligations; and

27.1.4 using Best Endeavours to mitigate the consequences of the Force Majeure Event

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

- 27.2 Notwithstanding anything to the contrary in this Agreement, to the extent that the provision of the Services is prevented or materially affected by a Force Majeure Event, the Department's obligation to pay the Charges shall be reduced accordingly by an equitable amount (which in the case of total suspension of the Services would be an amount equal to the total Charges for the period of suspension).
- 27.3 If the Supplier is excused under this Clause 27 from the performance of any material obligation under this Agreement for a continuous period of 10 Working Days, then The Department may at any time thereafter, and provided performance or punctual performance by the Supplier is still excused, serve a Termination Notice in respect of all or part of the affected Call-Off Contracts.

28 Preparation for and Consequences of Termination

- 28.1 If it is not commercially sensitive or in breach of Data Protection Legislation the Supplier shall give the Department on request the following up to-date information in a form that can be readily accessed by the Department or a Successor Operator and shall identify which of the following items the Supplier anticipates will transfer to the Successor Operator:
- 28.1.1 details of all material assets used in the provision of the Services;
 - 28.1.2 details of all material agreements used in the provision of the Services;
 - 28.1.3 details of all the Departmental Data used in the provision of the Services
 - 28.1.4 details of any on-going projects or other work carried out pursuant to this Agreement
- 28.2 In connection with any expiry or termination of this Agreement or any Call-Off Contract for whatever reason:
- 28.2.1 the Supplier shall provide the Department with a formal project closure report (the “**Project Closure Report**”). The Project Closure Report shall cover all aspects of the delivery of the relevant Call-Off Service and shall include an action plan detailing how any follow on actions should be applied for the benefit of future test cycles;
 - 28.2.2 the Supplier shall provide the Department and any Successor Operator with any assistance necessary for: (i) the transfer of the Services from the Supplier to the Department or any Successor Operator with the minimum of disruption and so as to prevent or mitigate any inconvenience to the Department; and (ii) the Department to understand the outcome of any Services (including the outcome of any trials or any Project Closure Report) and satisfy itself that all relevant materials have been handed to the Department or destroyed, as appropriate; and
 - 28.2.3 the Supplier shall promptly give the Department (or at the Department's request destroy) all copies of the Departmental Data, the Departmental Materials and the Departmental Software in the Supplier's control or possession as set out in the Exit Management Plan.
 - 28.2.4 Reasonable costs for Services performed as a result of termination and complying with clause 27. The Supplier shall use all reasonable endeavours to mitigate the amount of such costs and prior to any such costs being payable by DFE. The Supplier shall provide written evidence of the reasonableness and unavoidability of such costs along with a full breakdown as may be reasonably requested by DfE
- 28.3 Without prejudice to Clause 28.2, within 28 days of receiving a Termination Notice or confirmation from the Department that all Services in relation to a Call-Off Contract have been completed, the Supplier shall seek the Department's confirmation as to whether the Department requires the Supplier to destroy all or part of any pupil data received or processed by it in connection with the relevant Call-Off Services (the “**Specified Data**”). After the Department's confirmation or instruction that the Department requires all or part of the Specified Data to be destroyed, the Supplier shall promptly ensure that the relevant Specified Data and any copies or reproductions of that Specified Data are erased or destroyed from any memory device or medium by a secure method so that the data is unrecoverable. The Supplier shall, upon request,

provide to the Department written confirmation that all the provisions of this Clause 28.3 have been fully complied with.

- 28.4 Within 6 weeks of the Service Commencement date of every Call-Off Contract awarded to the Supplier, the Supplier shall prepare an Exit Management Plan in the form set out in Schedule 7 for the approval of the Department.

29 Confidentiality

- 29.1 Subject to Clause 29.7, the Supplier shall, and shall procure that its Group Companies, shall, treat as strictly confidential and not disclose or use any information received or obtained in connection with this Agreement or any Call-Off Contract which relates to the negotiation or provisions of this Agreement and any agreement entered into pursuant to this Agreement, or the Services (or any information supplied as part of the provision or receipt of the Services).

- 29.2 The Supplier shall ensure that its Personnel, professional advisors and consultants are aware of the Supplier's confidentiality obligations under this Agreement.

- 29.3 The provisions of Clause 29.1 shall not prohibit disclosure or use of information if and to the extent:

- 29.3.1 that use or disclosure is required for the provision of the Services;
- 29.3.2 required by Regulation or any competent Regulatory Authority or for the purpose of any judicial proceedings arising in connection with this Agreement (including any disclosure permitted by FOIA);
- 29.3.3 made to or used by the Supplier's professional advisers, provided that such professional advisers undertake to comply with the provisions of Clause 29.7 in respect of such information as if they were a party to this Agreement;
- 29.3.4 it becomes publicly available (other than as a result of a breach of an obligation of confidentiality);
- 29.3.5 the Department has given prior written consent to the disclosure or use; or
- 29.3.6 the information is already in the possession of the Supplier and is not subject to an obligation of confidentiality or a restriction on use

provided that, except where prohibited by any applicable law or regulation, prior to disclosure of any information pursuant to Clause 29.7, the Supplier shall give sufficient notice to the Department of such requirement so that the Department has reasonable opportunity to contest such disclosure and/or agree the timing and content of such disclosure.

- 29.4 Nothing in this Agreement shall prevent the Department from disclosing the Supplier's Confidential Information:

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

- 29.4.2 to any consultant, contractor or other person engaged by the Department;
 - 29.4.3 for the purpose of the examination and certification of the Department's accounts; or
 - 29.4.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Department has used its resources;
 - 29.4.5 that has been provided in the Exit Management Plan for the purposes of procurement of any replacement Framework and for the smooth transition to any Successor Operator; such disclosure shall be made subject to a Non-Disclosure Agreement between the Department and the third parties to whom the Exit Management Plan is disclosed.
- 29.5 The Department shall use reasonable endeavours to ensure that any Government department, Contracting Department, employee, third party or Subcontractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 29 is made aware of the Department's obligations of confidentiality.
- 29.6 Nothing in this Clause 29 shall prevent either Party from using any techniques, ideas or Know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of its Intellectual Property Rights.
- 29.7 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Department shall determine in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 29.8 Subject to Clause 29.7, the Supplier hereby consents to the Department publishing the Agreement in its entirety, including from time to time agreed changes to the Agreement, to the general public.
- 29.9 The Department may consult the Supplier to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.
- 30 Freedom of Information**
- 30.1 The Supplier acknowledges that the Department is subject to the FOIA and the EIR.
- 30.2 The Supplier shall and shall procure that its Subcontractors shall:
- 30.2.1 transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 30.2.2 give the Department a copy of all Information in its possession or control in the form that the Department requires within 5 Working Days (or such other period as the Department may specify) of the Department's request;
 - 30.2.3 provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to comply with its obligations under the FOIA and EIR; and
 - 30.2.4 not respond directly to a Request for Information unless expressly authorised to do so by the Department.

- 30.3 The Department shall determine in its absolute discretion and notwithstanding any other provision in the Agreement or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.

31 Data Protection Legislation

- 31.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Department is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is detailed in individual Call-offs by the Department and may not be determined by the Contractor.
- 31.2 The Contractor shall notify the Department immediately if it considers that any of the Department's instructions infringe the Data Protection Legislation.
- 31.3 The Supplier shall provide all reasonable assistance to the Department in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Department, include:
- 31.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 31.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 31.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 31.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 31.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement.
- 31.4.1 Process that Personal Data only in accordance with individual Call-offs, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Department before processing the Personal Data unless prohibited by Law;
 - 31.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Department as appropriate to protect against a Data Loss Event having taken account of the:
 - 31.4.2.1 nature of the data to be protected;
 - 31.4.2.2 harm that might result from a Data Loss Event
 - 31.4.2.3 state of technological development; and
 - 31.4.2.4 cost of implementing any measures;
 - 31.4.3 ensure that :
 - 31.4.3.1 the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in individual Call-offs);
 - 31.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and that they:
 - 31.4.3.3 are aware of and comply with the Supplier's duties under this clause;

- 31.4.3.4 are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - 31.4.3.5 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Department or as otherwise permitted by this Agreement; and
 - 31.4.3.6 have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - 31.4.3.7 not transfer Personal Data outside of the EU unless the prior written consent of the Department has been obtained and the following conditions are fulfilled:
 - 31.4.3.8 the Department or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Department;
 - 31.4.3.9 the Data Subject has enforceable rights and effective legal remedies;
 - 31.4.3.10 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Department in meeting its obligations); and
 - 31.4.3.11 the Supplier complies with any reasonable instructions notified to it in advance by the Department with respect to the processing of the Personal Data;
 - 31.4.3.12 at the written direction of the Department; delete or return Personal Data (and any copies of it) to the Department on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.
- 31.5 Subject to Clause 31.4, the Supplier shall notify the Department immediately if it:
- 31.5.1 Receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 31.5.2 Receives a request to rectify, block or erase any Personal Data;
 - 31.5.3 Receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 31.5.4 Receives any communication from the Information Commissioner or any other regulatory authority in connection Personal Data processed under this Agreement;
 - 31.5.5 Receives a request from any Third Party for disclosure or Personal Data where compliance with such request is required or purported to be required by Law; or
 - 31.5.6 Becomes aware of a Data Loss Event.
- 31.6 The Supplier's obligation to notify under Clause 31.5 shall include the provision of further information to the Department in phases, as details become available.
- 31.7 Taking into account the nature of the processing, the Supplier shall provide the Department with full assistance in relation to either Party's obligations under Data

Protection Legislation and any complaint, communication or request made under Clause 31.5 (and insofar as possible within the timescales reasonably required by the Department) including by promptly providing:

- 31.7.1 the Department with full details and copies of the complaint, communication or request;
 - 31.7.2 such assistance as is reasonably requested by the Department to enable the Department to comply with a Data Subject Access Request within the relevant Timescales set out in the Data Protection Legislation;
 - 31.7.3 the Department, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 31.7.4 assistance as requested by the Department following any Data Loss Event;
 - 31.7.5 assistance as requested by the Department with respect to any request from the Information Commissioner's Office.
- 31.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 31.8.1.1 The Department determines that the processing is not occasional;
 - 31.8.1.2 The Department determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 31.8.1.3 The Department determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 31.9 The Supplier shall allow for audits of its Data Processing activity by the Department or the Department's designated auditor.
- 31.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 31.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- 31.11.1 Notify the Department in writing of the intended Sub-processor and processing;
 - 31.11.2 Obtain the written consent of the Department;
 - 31.11.3 Enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
 - 31.11.4 Provide the Department with such information regarding the Sub-processor as the Department may reasonably require.
- 31.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 31.13 The Department may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or

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

- 31.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Department may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

32 Audit and Documents

- 32.1 The Supplier must keep such documents as are reasonably necessary to enable the Department to comply with its obligations under the Regulations and other documents in accordance with Good Industry Practice which are sufficient to enable the Department to have a complete and accurate understanding of the Supplier's performance of its obligations under this Agreement (the "**Documents**"). The Supplier must retain the Documents and the means to access and view the Documents, for the minimum period required by law, or 7 years, whichever is the greater.
- 32.2 The Supplier shall permit, and shall ensure that its Subcontractors permit, an auditor (which may be the Department or its designated representative (the "**Auditor**") to audit it and/or its Subcontractors:
- 32.2.1 up to twice in any calendar year to carry out a financial, quality and/or value for money audit but not more than once in any 6 month period; and
 - 32.2.2 at any time if the Department has reasonable concerns about the provision of the Services.
- 32.3 The Department shall (except where the purpose of the audit would be frustrated by doing so or where a Regulatory Authority or Regulations prohibit the Department from doing so) use reasonable endeavours to: give the Supplier 20 Working Days' notice of when the audit shall be conducted, except that the Department shall not be required to give the Supplier any prior notice of any audit which has as its main purpose the verification of the Supplier's compliance with its obligations under Clauses 38 or 26 or if the Department reasonably believes that the Supplier is in material breach of the Agreement.
- 32.4 The Supplier shall ensure that it and its Subcontractors provide all reasonable assistance to, and co-operate with, the Auditor, including providing access to the Documents and any other relevant information.
- 32.5 Each Party shall bear its own costs of any of the audits set out in Clause 32.2, except if the Auditor finds that the Supplier has acted in material breach of this Agreement or where the Supplier has failed to comply with its obligations under Clause 32.4, in which case the Supplier shall bear all costs of the audit.
- 32.6 If, as the result of any audit, it is found that the Supplier has overcharged the Department, the Supplier shall immediately pay to the Department a sum equal to the amount overcharged by electronic bank transfer and interest accrued on such overcharged amounts at a rate equal to the interest rate of 1% over the Bank of England base rate from time to time.
- 32.7 The Supplier shall attend any meetings requested by a Regulatory Authority. The Supplier shall, and shall procure that its Subcontractors shall: (i) permit any Regulatory Authority or its designated representatives access to their facilities to audit their provision of the Services and provide such information and assistance as the Regulatory Authority may require; and (ii) provide the Department with a copy of the results of any report relating to any inspection visit by the Regulatory Authority.

- 32.8 If the Department wishes to conduct audits additional to those set out in this Clause 32, the Department may do so and the Supplier shall be entitled to make a reasonable additional charge in respect of any costs incurred in complying or assisting with such audit.

33 Tax Indemnity

- 33.1 Where the Supplier is liable to be taxed in the UK in respect of consideration received under this Agreement, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- 33.2 Where the Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under this Agreement, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 33.3 The Department may, at any time during the term of this Agreement, ask the Supplier to provide information which demonstrates how the Supplier complies with Clauses 33.1 and 33.2 or why those Clauses do not apply to it.
- 33.4 A request under Clause 33.3 above may specify the information which the Supplier must provide and the period within which that information must be provided.
- 33.5 The Department may terminate this Agreement if-
- 33.5.1 in the case of a request mentioned in Clause 33.3 if the Supplier:
- 33.5.1.1 fails to provide information in response to the request within a reasonable time, or
- 33.5.1.2 provides information which is inadequate to demonstrate either how the Supplier complies with Clauses 33.1 and 33.2 or why those Clauses do not apply to it;
- 33.5.2 in the case of a request mentioned in Clause 33.4, the Supplier fails to provide the specified information within the specified period, or
- 33.5.3 it receives information which demonstrates that, at any time when Clauses 33.1 and 33.2 apply, the Supplier is not complying with those Clauses.
- 33.6 The Department may supply any information which it receives under Clause 33.3 to HMRC for the purpose of the collection and management of revenue for which they are responsible.
- 33.7 The Supplier warrants and represents to the Department that it is an independent Supplier and, as such, bears sole responsibility for the payment of tax and NICs which may be found due from it in relation to any payments or arrangements made under this Agreement or in relation to any payments made by the Supplier to its officers or employees in connection with this Agreement.
- 33.8 The Supplier will account to the appropriate authorities for any income tax, NICs, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Supplier under this Agreement or in relation to any payments made by the Supplier to its officers or employees in connection with this Agreement.
- 33.9 The Supplier shall indemnify Department against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the parties of their obligations under this Agreement (other than in respect of

employer's secondary NICs) and any costs, expenses, penalty fine or interest incurred or payable by Department in connection with any such assessment or claim.

- 33.10 The Supplier authorises the Department to provide the HMRC and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Agreement whether or not Department is obliged as a matter of law to comply with such request.

34 Mobilisation and Implementation

- 34.1 Within 10 Working Days of any Service Commencement Date, the Supplier shall meet the Contract Manager to demonstrate the readiness and appropriateness of plans, processes, systems, resourcing and any other factors required to enable the reliable completion of the relevant Call-Off Service ('Start-up meeting').
- 34.2 At the 'Start-up meeting' the Supplier shall, for each Call-Off Contract, deliver to the Contract Manager:
- 34.2.1 a project plan, which, as a minimum will include a timetable of the main activities required to meet the key milestones as set out in any Call-Off order form arising from this framework.
- 34.3 The Supplier shall not propose any amendments to the Milestone Dates for any Key Milestones unless there is good cause in order to protect the quality or any other aspect of the Services or to rectify a delay caused directly or indirectly by the Department. In any event, the Department shall be entitled to reject any amendments to the Milestone Dates proposed by the Supplier (whether as part of the Project Plan or otherwise) in its sole discretion, in which case the Milestone Dates set out in the relevant Call-Off Contract shall apply.
- 34.4 The Department shall, within 5 Working Days of receiving all of the documentation referred to in Clause 34.2 above, notify the Supplier of the results of the Department's review of the same. Following the Department notifying the Supplier of the results of the Department's review, the Supplier shall within 2 Working Days amend the PID, the Project Plan and the Process Document in accordance with any reasonable recommendations made by the Department and shall resubmit the PID, the Project Plan and the Process Document to the Department for the Department's approval. The Supplier shall continue to amend and resubmit and the Department shall continue to review the PID, the Project Plan and the Process Document in accordance with this Clause 34.3 until the Department has approved such documents.
- 34.5 If the Project Plan and the Process Document have not been approved in accordance with Clause 34.3 within 4 weeks of the Service Commencement Date, then the Department shall be entitled to serve a Termination Notice to effect immediate termination of the relevant Call-Off Contract.
- 34.6 The Supplier shall keep the Project Plan and the Process Document up-to-date throughout the Call-Off Contract term and shall provide updates in connection with their contents to the Department on a weekly basis during the Call-Off Contract term or as otherwise reasonably required by the Department. The Supplier shall not be entitled to change Milestone Dates, Service standards or descriptions or any other matters that may affect the Department's rights and remedies (or the Supplier's obligations) through its updates of the documents referred to in this Clause 34.
- 34.7 The Supplier shall ensure at all times the Supplier System has adequate capability, capacity and availability for all the processing and other functions necessary for performance of the Services in accordance with the Agreement, including compliance with the Regulations. The Supplier shall maintain, at its own cost, all required authorisations and licences in respect of the Supplier System.

- 34.8 The Supplier shall ensure that all of the Milestones are completed by their Milestone Dates. If at any time the Supplier is aware that any of the Milestones will not or are unlikely to be completed by their Milestone Dates, it shall:
- 34.8.1 inform the Department of the reasons for not meeting that Milestone Date;
 - 34.8.2 inform the Department of the consequences of not meeting the Milestone Date (including any impact on the likelihood of other Milestones being completed by their Milestone Dates);
 - 34.8.3 inform the Department of the steps it will take to mitigate against the consequences of not meeting the Milestone Date; and
 - 34.8.4 provide all additional resources necessary to ensure that the Milestone is completed as soon as reasonably practical.
- 34.9 The Supplier shall report progress towards the Milestones against the Milestone Dates in order to identify as soon as reasonably practicable whether a Milestone is unlikely to be completed by the relevant Milestone Date.
- 34.10 During the Exit Phase, the Supplier shall perform its obligations set out in the Exit Management Plan in accordance with Clause 28.

35 Acceptance Testing

- 35.1 When the Supplier believes that it has completed any Service Element for which it proposes to invoice, it shall inform the Department and, at the same time, provide the Department and any Departmental Service Provider nominated by the Department with all assistance and information reasonably required to assess whether or not the relevant Service Element has been successfully completed.
- 35.2 If the Department considers that the relevant Service Element has been successfully completed in accordance with the terms of this Agreement, it shall inform the Supplier (“**Acceptance**”). Acceptance shall be without prejudice to the Department’s rights or remedies under this Agreement and, without limitation, the failure to identify a failure in a Service Element under this Clause 35 shall not preclude the Department from requiring the Service Element to be fully completed at a later stage so that it complies with the requirements for such Service Element under the Agreement.
- 35.3 If the Department does not believe that the relevant Service Element has been successfully completed in accordance with the terms of this Agreement, it shall inform the Supplier. On receipt of such information, the Supplier shall, at its own cost, complete the relevant Service Element as soon as possible and shall re-submit the Service Element for further testing in accordance with Clause 35.1. This process shall be repeated until Acceptance.

36 Failures

- 36.1 The Supplier shall promptly warn the Department if it has reasonable grounds to believe that any development (including failure on the part of the Supplier to carry out its obligations and responsibilities under this Agreement) will have, or threatens to have, a detrimental effect on all or part of the Services. At the Department’s request, the Supplier shall take all reasonable steps to prevent such development from occurring and to prevent its reoccurrence.
- 36.2 If the Supplier fails to perform the Services in accordance with this Agreement to the extent that the failure is directly caused by the Supplier and/or its Subcontractors (a “**Defect**”) then, without prejudice to any other rights or remedies it may have under this Agreement or otherwise, the Department may require the Supplier by notice in writing, at the Supplier’s own expense, to remedy any Defect or to re-perform any Service

affected by the Defect within a reasonable time specified in the notice. If the Supplier fails to remedy a Defect within the time specified, the Department may, or may instruct a third party to, remedy that Defect, the reasonable costs of which shall be borne by the Supplier.

36.3 If the Supplier fails to perform the Services in accordance with this Agreement, then without prejudice to any other rights or remedies it may have under this Agreement or otherwise, the Department may require the Supplier by notice in writing to carry out an investigation into the cause of such failure. The Supplier shall carry out such an investigation in accordance with Good Industry Practice, promptly and at its own cost and shall provide a complete and accurate report of that investigation to the Department.

36.4 The obligations in this Clause 36 are without prejudice to any other obligations of the Supplier or rights of the Department whether under this Agreement or otherwise.

37 Charges

37.1 Any work undertaken by the Supplier, its Subcontractors or agents which has not been authorised in advance by the Department in an executed Call-Off Contract and which has not been otherwise agreed in accordance with the provisions of Schedule 5 (Change Control Procedure) shall be undertaken entirely at the expense and liability of the Supplier.

37.2 The Supplier shall invoice the Department for Charges in accordance with Schedule 2, on receipt of written Acceptance from the Department that the Acceptance Criteria set out in any Call-Off Contract have been met in full.

37.3 All Charges properly invoiced by the Supplier in accordance with this Agreement shall be paid by the Department within 30 days of receipt except for any amount in respect of which the Department wishes to raise a genuine dispute.

37.4 All costs and expenses must be invoiced by the Supplier as part of the Charges within 6 months of the date the Supplier is first entitled to invoice such sums against the payment milestones specified in the Call-Off Contract. The Supplier irrevocably waives the right to payment of any sums not invoiced within this period.

38 Security

38.1 The Parties shall comply with the provisions of Schedule 10 in addition to this Clause 38.

38.2 Within 10 Working Days after the Effective Date, the Supplier shall deliver to the Department for the Department's review a security plan that is compliant with the principles of the SPF (the "**Security Plan**"). The Supplier shall ensure that the Security Plan incorporates proposed security mechanisms for all data transfers, as well as detailed security policies, standards and controls and covers all aspects of the Services (including physical security, infrastructure, platforms, transportation of sensitive material, applications and services and interfaces). Following the Department notifying the Supplier of the results of this review, the Supplier shall within 5 Working Days amend the Security Policy and accordance with any recommendations made by the Department and shall resubmit the Security Plan to the Department for the Department's approval. The Supplier shall continue to amend and resubmit the Security Plan in accordance with this Clause until the Department has approved such plan. The Supplier shall ensure that the delivery of any Call-Off Services does not commence until the Department has approved the Security Plan in accordance with this Clause. The Supplier shall comply with the Security Plan approved by the Department at all times during any Call-Off Contract term.

- 38.3 The Supplier shall work with the Department to identify any materials or information assets that the Supplier and/or any Subcontractors may have access to and that may be classified as BIL1, BIL2 or BIL3 (as such terms are defined in government guidance. The Department shall determine the relevant BIL classification for any materials and information assets in its sole discretion and the Supplier shall treat and secure such information accordingly (including in accordance with the SPF).
- 38.4 The Supplier shall ensure that the following precautions are in place when transporting sensitive materials (including between the Supplier's premises, and to administrators and Markers):
- 38.4.1 the use of tamper-proof and clearly-labelled packaging;
 - 38.4.2 the use of only transport suppliers and/or couriers which (as a minimum) provide appropriate levels of security protection, track and trace and GPS tracking;
 - 38.4.3 the requirement for an approval from the Security Manager, or appropriate delegated representative, prior to any release of material for transport, and ensuring the Department's relevant Relationship Manager is informed of the transport's time of departure, proposed route and time of arrival at destination;
 - 38.4.4 for bulk movement of materials, the use of rigid-sided vehicles;
 - 38.4.5 not leaving vehicles unattended at any time and informing the Department's relevant Relationship Manager of any unexpected delay;
 - 38.4.6 ensuring deliveries are completed during a driver's allocated hours where possible and that the relevant vehicle is securely parked;
 - 38.4.7 when using a courier network for packages, ensuring a track and trace system is used for each package or consignment;
 - 38.4.8 ensuring a scan tracks the package or consignment at each transfer point in the network through to final proof of delivery; and
 - 38.4.9 notifying the Department within 3 business hours of becoming aware of any actual or suspected security issue or loss or breach of the terms of this Clause 38.
- 38.5 At least 5 Working Days prior to the relevant Service Commencement Date, the Supplier shall confirm in writing to the Department that all Personnel who have access to the Services, or secure materials or data related to the Services are vetted to a level necessary and appropriate for the BIL of the material. The Supplier shall ensure that any Personnel with access to pupil level data (excluding Markers that have been confirmed as holding qualified teacher status) have had a Disclosure and Barring Service check performed on them within the last 3 years and that such check has not flagged potential concerns around that Personnel's suitability to access pupil level data.
- 38.6 Without prejudice to any other rights and remedies of the Department, any breach of this Clause 38 by the Supplier that results in either a significant adverse effect on the reputation of the Department or on the reputation or integrity of the tests shall be a material breach of this Agreement.

39 Disaster Recovery and Business Continuity

- 39.1 The Supplier shall have in place a business continuity management system that is compliant with HMG standards <https://www.gov.uk/government/collections/government-security> and the SPF that has been approved by the Department within 4 months of the Effective Date.
- 39.2 The Supplier undertakes that it has and shall continue to have in place up-to-date disaster recovery plans and business continuity plans ("**Business Continuity Plans**"):
- 39.2.1 in accordance with the minimum standards prescribed from time to time by any Regulatory Authority;
 - 39.2.2 that are aligned with the Department's disaster recovery and business continuity plans to the extent that such plans have been notified to the Supplier and to the extent that they relate to the Services, events that could affect the Services or failures in the Services; and
 - 39.2.3 without limiting the generality of the foregoing, in accordance with Good Industry Practice.
- 39.3 Within 4 months of the Effective Date, the Supplier shall provide the Department with a copy of the Business Continuity Plans for its review. Following the Department notifying the Supplier of the results of this review, the Supplier shall within 5 Working Days amend the Business Continuity Plans in accordance with any recommendations made by the Department and shall resubmit the Business Continuity Plans to the Department for the Department's approval. The Supplier shall continue to amend and resubmit the Business Continuity Plans in accordance with this Clause 39.3 until the Department has approved such plans.
- 39.4 The Supplier shall test the Business Continuity Plans to ensure their effectiveness:
- 39.4.1 at least once per year following the Effective Date; or
 - 39.4.2 when the Department requests such a test via reasonable notice.
- 39.5 the Department shall be invited to participate in and attend such tests and shall be given all information and cooperation as may be reasonably requested in order to enable it to monitor such tests, including access to premises, locations and systems from which the Services are provided (or from which the Services will be provided in the event of a disaster), the results of any such testing and details of the steps taken to remedy any shortcomings or failings in the Business Continuity Plans identified as part of such testing. The Supplier shall provide the results of any test undertaken in accordance with this Clause **Error! Reference source not found.** to the Department within 5 Working Days of such test having been completed. A redacted version may be accepted upon agreement depending on the circumstances involved.
- 39.6 The Supplier shall provide a copy of the then current Business Continuity Plans to the Department on request from time to time.
- 39.7 If a disaster or any event envisaged in the Business Continuity Plan occur, the Supplier shall promptly notify the Department and implement the Business Continuity Plan as expeditiously as possible in the circumstances. In doing so, the Supplier shall not treat the Department any less favourably than any other Department of the Supplier.
- 39.8 Without prejudice to the Supplier's obligations under Clauses 30 and 31, the Supplier shall ensure that at least 2 back-up copies of the Departmental Data are made daily and held securely. The Supplier shall also ensure that at least one of the 2 copies of

the Departmental Data is kept in a separate secure offsite physical location to the primary copy of the Departmental Data.

- 39.9 The Supplier shall ensure that handling, implementation, usage and destruction of all data is process managed in line with ISO/IEC 27001 and Government security policies.
- 39.10 The Supplier shall restore or recreate any the Departmental Data that has been lost, corrupted or destroyed as a result of any Default by the Supplier. Such restoration or recreation shall be carried out promptly and at the Supplier's own cost. This right of the Department is in addition, and shall be without prejudice, to any other right or remedy of the Department under this Agreement or otherwise.

40 Governance, Service Management and Reports

- 40.1 During the Term, the Supplier shall meet with the Department, upon the Department's reasonable request, to discuss the Supplier's capability to perform any of the Services (irrespective of whether or not the Supplier and the Department have executed any Call-Off Contracts) and the Parties shall discuss any strategic issues at such meetings which the Department may raise at or in advance of the meetings.
- 40.2 During any Call-Off Contract term, the Supplier shall report on a weekly basis to the Department (including, at the Department's option by attending meetings with the Department) on its progress in completing the Service Elements, including: completion of, or failure to complete, any Milestones; an overview of the work completed to date and the work currently being performed; estimated time to complete the Milestones; and details of any significant risks or challenges faced by the Supplier, together with details of the measures taken to mitigate or remedy those risks or challenges.
- 40.3 24 hours in advance of any meetings held pursuant to Clause 40.2, the Supplier shall provide to the Department the Supplier's report on its progress in completing the Service Elements, as set out in Clause 40.2.
- 40.4 The Supplier shall take steps in accordance with Good Industry Practice to ensure that all transactions, data access and processing carried out in connection with the Services can be securely traced to an individual or organisation through a secure audit trail.
- 40.5 Within 5 Working Days of the start of each month during a Call-Off Contract term, the Supplier shall provide the Department with information about the current status of the Services, performance against the Project Plans and the Management Information for the previous month. The Supplier shall ensure that the content of the Management Information provided is adequate for the purpose for which the relevant Management Information is required, up-to-date and accurate. The Supplier shall also provide the Department with any additional information reasonably requested by the Department in order to assess the performance or progress of the Services from time to time.
- 40.6 In respect of each Call-Off Contract, the Supplier shall maintain and keep up-to-date throughout any Call-Off Contract term in accordance with PRINCE2 principles (or any other acceptable project management methodology) a risk log (the "**Risk Log**"), which includes details of the risks, which may affect the Call-Off Service and any significant changes in process. The Supplier shall provide such Risk Log to the Department each week.
- 40.7 The principal point of contact between the Parties in relation to issues arising out of this Agreement, any Call-Off Contract or the performance of the Services will be the relevant Relationship Managers. Either Party may change the identity of its Relationship Managers at any time by written notice to the other.
- 40.8 The Supplier shall from time to time:

- 40.8.1 provide oral or written reports to the Department and liaise with the Department on the progress and management of the Services as and when reasonably required by the Department;
- 40.8.2 provide to the Department any information, reports or assistance requested by Ofqual in the exercise of its powers under the Regulations, in an open and co-operative manner and in accordance with any timing and format requirements set by Ofqual; and
- 40.8.3 attend and report to meetings with the Department and its nominees (which may include Ofqual) to discuss any aspect of the Services as and when reasonably required by the Department.

41 Complaints

- 41.1 The Supplier shall notify the Department of any Complaint made against it in relation to its performance under the Framework Agreement or a Call-Off Contract made pursuant to the Framework Agreement by any third party within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Supplier's plans to resolve such Complaint.
- 41.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Framework Agreement or a Call-Off Contract, the Supplier shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.
- 41.3 Within two (2) Working Days of a request by the Department, the Supplier shall provide full details of a Complaint to the Department, including details of steps taken to its resolution.

42 Regulations

- 42.1 Save where the Department determines that a Regulatory Change is not required in accordance with Clause 42.7 (and then only to the extent of that Regulatory Change), the Supplier shall comply, and shall ensure that its Subcontractors and Personnel comply, with all Regulations and Government standards (including the e-government interoperability framework) at all times when performing the Services, insofar as such Regulations and Government standards apply to the Services.
- 42.2 The Supplier shall ensure that the Services are performed so that the Department complies with all Regulations, to the extent the Department's compliance with the Regulations is dependent on the Services.
- 42.3 Each of the Parties shall advise the other immediately if it becomes aware of any non-compliance or suspected non-compliance by the Supplier with the provisions of Clauses 42.1 or 42.2 in connection with the performance of the Services. If such an event occurs, the Supplier shall promptly make available to the Department any information that the Department reasonably requires for the purposes of any further investigation of such non-compliance or suspected non-compliance.
- 42.4 If the Supplier receives any correspondence from any Regulatory Authority (save in respect of: (i) corporation tax; or (ii) NICs) that relates to the Services, it shall promptly provide a copy of that correspondence to the Department unless it is prevented from doing so by the Regulations or a Regulatory Authority. The Supplier shall give the Department a reasonable opportunity to discuss and make representations on the practical and written response to such correspondence, and shall only respond to the Regulatory Authority if:

- 42.4.1 the terms of the response have been approved by the Department (such approval not to be unreasonably withheld or delayed); or
- 42.4.2 the Supplier is required by Regulations to respond to the Regulatory Authority without the Department's consent.
- 42.5 If a change to any Regulation means a change to the Services or Charges is required (a "**Regulatory Change**"), the Supplier shall, subject to Clauses 42.6 and 42.7, make that Regulatory Change as soon as reasonably possible.
- 42.6 The Parties shall agree the details and cost of the Regulatory Change in accordance with the Change Control Procedure.
- 42.7 If there is any disagreement between the Parties regarding any Regulatory Change or potential Regulatory Change the Department shall:
 - 42.7.1 have the right to determine: (a) whether a Regulatory Change is required; and (b) how the Supplier shall implement that Regulatory Change, in which case the Supplier shall promptly implement the Regulatory Change as determined by the Department in accordance with this Clause 42.7.1; and
 - 42.7.2 pay the Supplier the costs of implementing the Regulatory Change which shall be equivalent to the Supplier's reasonable costs, calculated on a Time and Materials Basis, save that if the Regulatory Change is carried out for other service recipients of the Supplier, the Department shall only bear an equitable proportion of the Supplier's reasonable costs.

43 Discrimination

- 43.1 The Supplier shall have a written equal opportunities and diversity policy or shall sign a statement confirming adoption of the Department's equal opportunities policy for the duration of the Term. The Supplier shall make a statement of such policy or confirmation of such adoption available to the Department upon request.
- 43.2 The Supplier's equal opportunities and diversity policy shall relate to all forms of unlawful discrimination which is prohibited under Article 14 of the European Convention on Human Rights and the Equality Act 2010 (the "**EA**").
- 43.3 The Supplier shall ensure that, in carrying out its obligations under this Agreement, neither it nor any of its Subcontractors commits or incites another to commit an act of discrimination rendered unlawful, or any act of discrimination which if committed by the Department would be rendered unlawful, by the EA, the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 or the Human Rights Act 1998.
- 43.4 The Supplier shall ensure that it and its Subcontractors perform their obligations under this Agreement in a manner which enables the Department to comply and to demonstrate compliance with the equality duties imposed on the Department by and under the EA. In particular but without prejudice to the generality of the foregoing, the Supplier shall, subject to Clause 43.5:
 - 43.4.1 comply with all reasonable policies developed by the Department with regard to compliance with the duties imposed on the Department by and under the EA (the "**EA Policies**") as are relevant to the provision of the Services and as are amended and notified to the Supplier by the Department from time to time;

- 43.4.2 comply with all reasonable directions from the Department with regard to the provision of the Services in accordance with the EA;
 - 43.4.3 collect and supply to the Department such data and other information as the Department may reasonably request with a view to ensuring and demonstrating compliance with the EA; and
 - 43.4.4 provide all reasonable assistance to, and consultation and liaison with, the Department with regard to any assessment of the impact on and relevance to the provision of the Services of the duties imposed by the EA and the development or modification of the EA Policies relevant to the provision of the Services.
- 43.5 If:
- 43.5.1 any requirement imposed on the Supplier under this Clause 43 to comply with the EA or other legislation referred to in this Clause 43 constitutes an addition or alteration to the policies and requirements specified in this Agreement; and
 - 43.5.2 the Department is satisfied that, in complying with that requirement, the Supplier will incur expenditure significantly additional to that which would otherwise be incurred by the Supplier in complying with the EA in general

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

- 43.6 The Supplier will provide reports and other information reasonably requested by the Department from time to time to demonstrate that the Supplier and the Subcontractors are fulfilling their obligations under the EA.

44 Prevention of Fraud and Corruption

- 44.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Personnel, have at any time prior to the Effective Date:
- 44.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 44.1.2 been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 44.2 The Supplier shall not during the Term:
- 44.2.1 commit a Prohibited Act; and/or
 - 44.2.2 do or suffer anything to be done which would cause the Department or any of its Personnel, consultants, contractors, Subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 44.3 The Supplier shall, during the Term:
- 44.3.1 establish, maintain and enforce, and require that its Subcontractors establish, maintain and enforce, policies and procedures which are

adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

44.3.2 keep appropriate records of its compliance with its obligations under Clause 44.3.1 and make such records available to the Department on request.

44.4 The Supplier shall immediately notify the Department in writing if it becomes aware of any breach of Clauses 44.1 and/or 44.2, or has reason to believe that it has or any of the Personnel have been:

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

44.4.2 listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

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

44.5 If the Supplier notifies the Department pursuant to Clause 44.1, the Supplier shall respond promptly to the Department's enquiries, co-operate with any investigation, and allow the Department to audit any books, records and/or any other relevant documents.

44.6 If the Supplier defaults under Clauses 44.1 and/or 44.2, the Department may by notice:

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

44.6.2 immediately terminate the Agreement.

44.7 Any notice served by the Department under Clause 44.6 shall specify the nature of the Prohibited Act, the identity of the party who the Department believes has committed the Prohibited Act and the action that the Department has taken (including, where relevant, the date on which the Agreement shall terminate).

45 General Communications

45.1 The Supplier must not make any public announcement or issue any communication or circular relating to this Agreement without the prior written approval of the Department.

46 Waiver

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

47 Notices

47.1 Any notices to be given under this Agreement 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 the Agreement (in the case of the Supplier).

Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, if sent by post, 48 hours after posting or, if sent by facsimile transmission, 12 hours after proper transmission.

48 Dispute Resolution

48.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Agreement.

48.2 Any dispute not capable of resolution by the Parties in accordance with the terms of Clause 48.1 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution Model Mediation Procedure.

48.3 Neither Party may commence any court proceedings/arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle it by mediation, but any such mediation may be terminated by either Party at any time if such Party wishes to commence court proceedings or arbitration.

49 Law and Jurisdiction

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

50 TUPE

50.1 No later than 6 Months prior to the end of the Term the Supplier shall fully and accurately disclose to the DFE, within 30 days of the request, all information that the DFE may reasonably request in relation to the Staff including the following:

50.1.1 The total number of Staff whose employment/engagement shall terminate at the end of the Term;

50.1.2 The age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 7.1.1;

50.1.3 The terms and conditions of employment/engagement of the Staff referred to in clause 7.1.1, their job titles and qualifications;

50.1.4 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

50.1.5 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”**).

50.2 At intervals determined by the DFE (which shall not be more frequent than once every 30 days) the Supplier shall give the DFE updated TUPE Information.

50.3 Each time the Supplier supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Supplier.

50.4 The DFE may use TUPE Information for the purposes of any retendering process.

- 50.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Supplier shall indemnify and keep indemnified the DFE, the Crown and any Replacement Supplier against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:
- 50.5.1 the provision of TUPE Information;
 - 50.5.2 any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Supplier or any Sub-Supplier in respect of any Returning Employee on or before the end of the Term;
 - 50.5.3 any failure by the Supplier or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the DFE or a Replacement Supplier to comply with its duties under regulation 13 of TUPE;
 - 50.5.4 any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - 50.5.5 any claim by any person who is transferred by the Supplier to the DFE and/or a Replacement Supplier whose name is not included in the list of Returning Employees.
- 50.6 If the Supplier becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the DFE and provide the DFE with up to date TUPE Information.
- 50.7 This clause 7 applies during the Term and indefinitely thereafter.
- 50.8 The Supplier undertakes to the DFE that, during the 12 Months prior to the end of the Term the Supplier shall not (and shall procure that any Sub-Contractor shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):
- 50.8.1 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 Supplier 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);
 - 50.8.2 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);
 - 50.8.3 transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's

career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or

- 50.8.4 Supplier can recruit or bring in additional individuals to provide the services if personnel should leave. The supplier must inform the Department of any such change.

As witness the hands of the parties

Authorised to sign for and on behalf of [Supplier'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

1 Introduction

- 1.1 The purpose of this Schedule 1 is to provide the contractual statement of the Services which may be provided under this Framework subject to a Call-Off Contract. At such time as the Department creates a Call-off Contract with the Supplier, the details of the Services in this Schedule will be specified in the Call-Off Contract.

1 1Service Elements

Detailed Requirements - Key stage 1 & 2 national curriculum tests

Part A: General core services

- 1.2 The Department for Education ("DfE" or "the Department") is responsible for the central administration of all aspects of education and has the primary statutory duty of promoting the education of pupils in England and ensuring the effective implementation of education policy.
- 1.3 The government's responsibilities for National Curriculum Assessment are delivered by the Standards and Testing Agency, an executive agency of the DfE. The STA's main functions are to:
- develop high quality and rigorous DfE tests and assessments in line with Ministerial policy;
 - undertake operational delivery of DfE tests and assessment (including printing, distribution, marking and data capture of tests as appropriate);
 - support schools, test centres and other stakeholders to deliver DfE tests and assessments;
 - support and implement arrangements for moderation of teacher assessment judgements.
- 1.4 To support the development of assessments, DfE requires a Supplier framework of multiple suppliers to draft and develop potential items and their mark schemes and/or coding frames ready for formal trialling.
- 1.5 Details of the statutory national curriculum tests can be found in the test frameworks for each key stage and subject: <https://www.gov.uk/government/collections/national-curriculum-assessments-test-frameworks>
- 1.6 Past test papers can be found on gov.uk: <https://www.gov.uk/education/primary-curriculum-key-stage-2-tests-and-assessments>
- 1.7 Suppliers may be asked to provide services similar to those specified here for national curriculum tests to support the development of other DfE assessments from time to time.

Once an organisation has been accepted on to the framework, they will bid for item writing contracts. An invitation to quote (ITQ) will be disseminated to all those on the framework for all work.

Scope of Services

- 1.8 The core requirements for the Item Writing Services Framework include the delivery of the following services in order to support the development of high-quality, accessible and inclusive items suitable for DfE assessments:
- Item writing
 - Informal item trialling
 - Reviewing, refining and amending items
 - Item classification
 - Design (items and texts)

- Text searching / sourcing (English reading)
- Reviewing texts (English reading)
- Text selection (English reading)/Context selection (science)
- Informal item and text trialling (English reading)
- Printing to meet handover or trialling requirements
- Developing mark schemes
- Developing coding frames
- Administration / organisation of various elements

2 Introduction to Item Writing

- 2.1 As part of the test development process, the DfE requires a number of suppliers who are capable of understanding the relevant programmes of study, test frameworks and curricula for particular tests and developing high-quality test items, with accompanying mark schemes and/or coding frames. Each call-off from this framework will provide requirement details including the subject and content domain areas, item types, mark range, difficulty range and other desired properties.
- 2.2 The DfE reserves the right to add to or amend the range of the item writing services as required. The framework is intended to be flexible and suppliers must be able to provide the required range of item writing services.

3 Specification of Requirements (SoR)

3.1 This section provides the specification of requirements for the Item Writing Services Framework.

The SoR is divided into 4 sections, which are summarised below:

- Section 1: Key outputs for each call-off
- Section 2: Core general requirements
- Section 3: Core technical requirements
- Section 4: Performance criteria

3.2 DfE wishes to enter into a framework agreement with a number of exceptional suppliers who demonstrate expertise across the core services required within the Item Writing Services Framework. Tenderers are expected to provide evidence to demonstrate their current capability in item writing. However, it is expected that these can be developed further during the life of the framework agreement allowing access to additional tests and / or subjects.

Section 2: Services specific to item writing

This section covers general requirements which may be required during an Item Writing call-off. Call-offs will not necessarily include all of these elements and could be broken down to meet the requirements of individual call-offs. Bidders must demonstrate their ability to meet requirement 1.1 (Item writing) as well as a minimum of 5 other requirements from the table below.

1 Item writing

No	Requirement
1.1	Item writing a) Criteria for items to be drafted will be specified in the call-offs for individual work packages. Items will also meet the relevant criteria from the test frameworks. b) Suppliers will need to take account of any additional guidance provided by STA at start up meetings and during meetings and checkpoints. c) Items/texts from previous rounds must not be submitted. d) Items must be of high quality and suitable for the age and ability range of the intended test population. e) Consideration should be given to issues of accessibility, inclusion and diversity throughout the development of an item. Guidelines will be provided at the start of each call-off and further guidance will be given by TDRs during the life of the call-off. f) Item design, layout and wording should comply with house style for national curriculum tests and subject conventions; guidance will be provided by TDRs. g) Each item (or group of items) is to be accompanied by an appropriate mark scheme and/or coding frame. Mark schemes and/or coding frames will need to be written alongside the items h) Items will need to be classified throughout development according to metadata required for the STA item bank (e.g. item type, content and cognitive domains (taken from the test framework), context, enemies, copyright information). An item classification template will be provided in Excel format for this purpose, together with guidance for completion. Evidence to justify items' classification may be required. i) Enemies between items should be minimised and must be recorded on the item classification spreadsheet. j) Items must not be direct clones of others within the work package, previously submitted items or previous live tests. k) The Supplier will act on feedback provided by TDRs throughout the development process to make amendments to items. l) Suppliers will need to write more than the number of items required in the call-off to ensure that sufficient items of the required quality are available for handover after attrition has taken place during the development process. Suppliers should target their over-writing in areas where attrition is most likely to occur and will be asked to set out their plan and rationale for over-writing in their response to each ITQ.

	m) Final items, and their mark schemes and/or coding frames, must be handed over electronically in the format stipulated in the ITQ and in compliance with national curriculum test style guides, which will be provided by STA. Coding frames and mark schemes will be handed over in Word and must adhere to templates and guidance provided by STA. File names must adhere to naming conventions specified by STA. n) All materials, including any extra items required, will be written and costed for within this contract regardless of whether they are formally part of the final handover requirements. For this reason, handover of the IPR to DfE is required for all items. o) While the items that do not meet the quality or coverage requirements to be accepted at final handover do not need to be handed over in the format required at final handover, they will need to be transferred to DfE at their last stage of development, together with their IPR. p) The Supplier will provide details of any third-party copyright material used within their items, including the IPR owner's details and source details. q) Where text / artwork has been commissioned by the Supplier, IPR ownership must be transferred to the DfE, alongside transfer of IPR of all test materials to the DfE. r) Deeds of assignment of IPR ownership for third parties (for commissioned work only) and the Supplier must be handed over at final handover as one of the deliverables. The transfer of ownership will include all material written within the project timeline, regardless of whether it reaches formal handover at the end of the project.
1.2	Informal item trialling a) The purpose of the informal item trialling is to ascertain whether pupils can access the item and to gain an initial indication of the item's suitability in terms of difficulty, context, wording, interest level and information provided, as well as any issues of inclusion, representation or diversity that might arise. Information gathered through informal trialling will also support development of the mark schemes and/or coding frames. b) No pupil data should be collected as part of these trials. c) The Supplier must detail their proposed approach to informal trialling in their response to each ITQ. The proposed methodology should include elements to elicit qualitative feedback from pupils and teachers, observation of pupils as they attempt the items and analysis of responses given. d) Informal item trialling must be conducted with appropriate age and ability groups to derive meaningful qualitative data on item performance. e) Where possible, trialling should take place within schools in England. Trialling may take place in other English-speaking countries/jurisdictions with pupils of the same age and ability range as the intended test population. The Supplier will need to provide an explanation of considerations made to ensure the equivalence of trialling internationally with trialling in England in their response to each ITQ and in discussions with TDRs during the call-off. This will include detailed discussion of curriculum differences and how they might affect trialling outcomes. f) The informal trialling must involve a minimum of 10 pupils per item and each item must be trialled in more than one school setting. Where possible, the schools involved should have distinct characteristics (e.g. school type, region, EAL/FSM). g) The Supplier will participate in a pre-trial meeting with STA to discuss the trial materials and discuss required amendments before trialling starts. h) Where possible, the item-writers should undertake informal trialling so that they can see first-hand how pupils respond to the questions. i) The Supplier may also be asked to informally trial existing items from the item bank, which have originated from other parties. j) The Supplier will provide a written report on the outcomes of informal trialling, including an overview of characteristics of schools/pupils who participated in the trial, a summary of their relevant curriculum experience and a commentary on item performance, including suggested amendments. Details of the requirements for the informal trialling report will be provided within each ITQ.

1.3	Reviewing, refining and amending items a) As directed by STA, the Supplier will make amendments to items (including those originating from other parties) and their mark schemes and/or coding frames as a result of trialling evidence, expert review or other feedback from TDRs. b) Some call-offs may specifically require the review, refinement and amendment of existing items from the item bank. c) The Supplier will update the item classification spreadsheet to reflect amendments made to items.
1.4	Item classification a) The Supplier will classify specified items according to the metadata requirements of the STA item bank. Metadata to be provided will be defined in specific work requests and may include (but is not limited to) item type, content and cognitive domains (taken from the test framework), contextual information, enemies and copyright information. b) An item classification template will be provided in Excel format for this purpose, together with guidance for completion. Evidence to justify items' classification may be required.
1.5	Design (items and texts) a) Final items and texts must be handed over in templates provided (InDesign) and to meet national curriculum test style guides, which will be provided by STA. b) Images must be approved by TDRs and the STA design team prior to inclusion in an item and must meet image guidelines, which will be provided by STA. c) A copyright report must be provided for all images and copyright must be transferred to STA at final handover. d) Designed items will be submitted to the STA design team and TDRs for review; the Supplier must make requested amendments prior to final handover. e) Coding frames and mark schemes will be handed over in Word.
1.6	Text searching/sourcing (English reading) a) The Supplier will research or commission appropriate texts to meet the work package requirements and other specifications for the test. b) The Supplier must ensure compliance with guidance from STA on any texts, authors or contexts to be avoided. c) Texts from previous rounds or used in previous live tests must not be submitted. d) Texts must be fact-checked prior to submission. e) Published texts should be suitable for inclusion in a test with minimal amendment. f) For all texts, full copyright information must be provided. For texts commissioned under the call-off, copyright must be transferred to STA at final handover. g) The Supplier should highlight any potential sensitivities associated with the text to STA. h) The Supplier may be required to provide evidence (for example, text mapping or a written report) of the text's suitability to proceed for further rounds of development and, ultimately, for inclusion in national curriculum tests.

1.7	Reviewing texts (English reading) a) The Supplier will review texts (including those sourced by STA or other parties) for suitability for inclusion in a national curriculum test, taking into account any additional guidance provided by STA. b) The Supplier will provide a written rationale for their recommendations.
1.8	Text selection meeting (English reading)/Context selection meeting (science) a) An initial stage to ensure that any items written will be based on a text or content/context area that is suitable. b) The Supplier will submit texts / contexts to STA along with supporting rationale. c) Texts / contexts will be discussed at a meeting and STA will agree those that are suitable to go forward.
1.9	Text trialling (English reading) a) The purpose of the text trials is to ascertain whether pupils enjoy reading the texts and to get some initial indication of their suitability for the test population in terms of difficulty, length, interest level and any issues of inclusion or diversity that might arise. b) Texts must be trialled on pupils at the appropriate age. c) The texts should not be accompanied by any items at this stage. Where possible, trialling should take place within schools in England. Trialling may take place in other English-speaking countries/jurisdictions with pupils of the same age and ability range as the intended test population. The Supplier will need to provide an explanation of considerations made to ensure the equivalence of trialling internationally with trialling in England in their response to each ITQ and in discussions with TDRs during the call-off. This will include detailed discussion of curriculum differences and how they might affect trialling outcomes. d) The informal trialling must involve a minimum of 10 pupils per text and each text must be trialled in more than one school setting. Where possible, the schools involved should have distinct characteristics (e.g. school type, region, EAL/FSM). e) The Supplier must collect and compile enjoyment ratings (on a scale provided by STA) as well as qualitative feedback on each text. f) No pupil data should be collected as part of these trials.
1.10	Printing to meet trialling and handover requirements a) The Supplier must provide any hard copy materials requested in the ITQ. b) The Supplier must obtain approval from STA to print
1.11	Developing mark schemes a) The Supplier must provide mark schemes (and/or coding frames, where specified) to accompany all items handed over to STA. b) Suppliers may be asked to develop or refine mark schemes for existing items from the item bank. c) For all items, the mark scheme must indicate the intended creditworthy response(s) and any alternative creditworthy responses. d) For all items, the mark scheme must give any additional marking guidance necessary to ensure marker understanding and marker reliability (for example, clarification of a common misconception being tested through the item or guidance on the distinction between borderline creditworthy/non-creditworthy responses). e) For constructed response items, the mark scheme must also indicate the most common anticipated incorrect responses. f) For multi-mark items, the mark scheme must also indicate clearly the distinction between responses at each mark point. g) For all items, the mark scheme should show consistency with how similar items have been marked in previous live tests and should show regard for the established marking principles in that subject (published annually within the mark schemes that accompany the tests). h) Mark schemes will be handed over in Word and must adhere to templates and guidance provided by STA.

1.12	Developing coding frames a) Where specified, the Supplier will develop coding frames to support the gathering of quantitative evidence relating to item performance through trialling. b) STA will provide guidance and templates for the required coding frame format. c) Coding frames must be sufficient to allow high-quality, accurate coding to take place and for subsequent judgements to be made about item performance and suitability. d) For all items, the coding frame must indicate the intended creditworthy response(s) and any alternative creditworthy responses. Where appropriate, coding frames should also capture misconceptions being tested through the item, so that its effectiveness can be evaluated. e) For all items, the mark scheme must give any additional coding guidance necessary to ensure coder understanding and coder reliability (for example, clarification of a common misconception being tested through the item or guidance on the distinction between borderline responses for each code) f) For constructed response items, the coding frame must also indicate the most common anticipated incorrect responses, which should be grouped in a way that will generate meaningful quantitative data as a result of trialling g) For intended multi-mark items, the coding frame must also indicate clearly the distinction between responses at each anticipated mark point. h) Coding frames will be handed over in Word and must adhere to templates and guidance provided by STA.
1.13	Administration / organisation of various elements a) Suppliers will participate in project meetings throughout the lifetime of each call-off, including participation in start-up meetings, regular checkpoints and lessons learnt. b) Suppliers will participate in other communications to ensure the successful delivery of the project and to enable effective project management, including phone and email communication as appropriate.

Section 2: General Core Services

This section covers general requirements that must be delivered for each Item Writing call-off, irrespective of size and duration. Bidders must demonstrate their ability to manage projects and programmes using established methodologies as noted below.

2 Project Management

No	Requirement
2.1	The Supplier must manage all aspects of delivery of the Services in accordance with PRINCE2 and Management of Risk (MoR) project and risk management methodologies.
2.2	The Supplier must submit a Project Initiation Document (PID) which clearly sets out the project for the delivery of services at the outset of each call-off. The PID must be consistent with PRINCE2 controls and cover all aspects of the delivery of the Project, including operational delivery, governance and interfaces with other organisations (where applicable).
2.3	The Supplier must document, provide and maintain all processes and procedures utilised in the delivery of the services, including interfaces with other relevant parties ensuring that all relevant standards are applied or adhered to including project management methodologies.
2.4	Prior to the commencement of a work package, the Supplier must discuss and demonstrate the readiness and appropriateness of plans, processes, systems (both internal and external), data interfaces with external or third party suppliers, resourcing and any other factors required to enable the reliable completion of the work package.
2.5	The Supplier must hold, and permit DfE open access to detail relating to all activities undertaken in delivering the services.
2.6	The Supplier must comply with any reasonable requests for information from DfE.
2.7	The Supplier must attend any meetings as reasonably requested by DfE at locations determined by DfE.

3 Management Information

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

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

4 Security

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

No	Requirement
4.1	The Supplier must ensure that a security manager is appointed who shall have ultimate responsibility for all aspects of information governance and security management relating to the Supplier Services. No later than 10 business days after the effective date the Supplier must produce and adhere to a security plan, based on and compliant with the mandatory requirements of the latest HMG Cabinet Office Security Policy Framework. The supplier will in conjunction with the DfE undertake an accreditation triage of the 'Business impact level' of the data to be processed, managed or otherwise used by the supplier or their sub-contractors to ensure the security controls meet the require levels of the current DfE risk appetite. Dependent upon the data involved and the outcomes of the accreditation triage the supplier may have to produce either a full Risk Management Accreditation Documentation Set (RMADS) or comply with a commercial assurance based on meeting the Cabinet Office SPF mandatory requirements.
4.2	The Supplier must require that any Sub-Contractor(s) are operating acceptable security policies, in line with the requirement at 4.1 above. The Supplier must confirm that a Sub-Contractor's security policies are acceptable, in line with the agreed requirements as at 4.1 above prior to letting the relevant sub-contract. The Sub-Contractor must agree to provide documented evidence of meeting these requirements to the DfE, including the completion of the Cabinet Office SPF.

4.3	The Supplier must ensure that all physical and logical movement of materials are secure and meet latest HMG Information Assurance requirements. Suppliers must present in advance to the DfE proposals for all methods of movement of materials both physical and logical. These proposals must be pre-agreed by the DfE prior to any materials movements.
4.4	No materials or data related to the Services shall be transferred or processed outside of the European Economic Area (EEA) at any time, unless DfE has given its explicit consent to such transfer or processing.
4.5	The Supplier will co-operate with DfE at all times to allow access to Supplier and any sub-contractor premises and systems and to provide assurance that all plans policies and procedures are being complied with by the Supplier, or to verify any suspected security issues.
4.6	The Supplier must ensure all staff working on the test materials sign a confidentiality agreement and a security declaration confirming they will comply with the Supplier's security policy and standards. DfE may request evidence of this at any time. Failure to provide evidence will be a breach of the contract.

5 Equalities

No	Requirement
5.1	The Supplier will at all times comply with and require that its sub-Contractors comply with the Equality Act 2010. Evidence of complicity may be sought at any stage within the contract.
5.2	The Supplier will provide reports and other Management Information to DfE, at intervals to be agreed, to demonstrate that the Supplier and its sub-Contractors are fulfilling their obligations under the Equality Act 2010.
5.3	The Supplier shall agree and implement any changes to the equality plan in line with DfE Change Control Procedure.
5.4	The Supplier shall nominate a representative for all equalities issues.
5.5	The Supplier shall produce an equality plan for each call-off outlining their commitment and compliance to the Equality Act 2010 and report at regular intervals (checkpoint reports) and include a final statement within the final administration report.
5.6	The Supplier will demonstrate that guidance on accessibility, diversity and inclusion has been considered for the test materials and in ways of working.

6 Financial requirements

No	Requirement
6.1	The Supplier's financial accounting system must be able to capture all financial and system coding in order to fulfil management and statutory accounting. The Supplier shall ensure VAT is correctly accounted for and charged to the Department where appropriate. It is for the Supplier to ensure compliance with VAT requirements. For clarity refer to the HMRC rules and regulations.
6.2	A contractual agreement must be defined and agreed with the administrators and / or markers involved in submitting the work.
6.3	The Supplier will ensure where BACs is used that BACS information is controlled and kept secure in order to reduce the risk of fraud. All payments must be countersigned and have the necessary approval documents/receipts that must be attached and made available prior to payment. All work needs to verify that is has been completed and delivered.
6.4	The Supplier must pay all sub-Contractors within 30 days of receipt of invoice.
6.5	The Supplier must make the following information available on their invoice: • full address • contact number • VAT number (VAT number may or may not be applicable depending on the size of the organisation).
6.6	The Supplier will instigate a fraud detection and response plan so that all controls are setup on the system.

7 Resources

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

8 Exit and transition

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

Section 3: Core Technical Services

9 Recruitment and management of schools

If the call off requires informal trialling, the Supplier must manage schools with sensitivity in order to ensure schools will continue taking part in informal trialling. This includes considering recruitment strategies and the tone of all communications with schools, reassuring schools that the workload placed on them will be kept to a minimum, and ensuring that the informal trialling takes place at a mutually convenient time.

No	Requirement
9.1	The Supplier must ensure all schools included in informal trialling sign a confidentiality agreement. This must be signed by all adults who are present during the administration for example teachers, teaching assistants, or any other adults who may act as readers, amanuenses, translators or in any other capacity. The Supplier must agree all communications with STA before sending to schools in order to ensure to ensure tone and messaging are consistent with STA's communication strategies and that the agency's reputation is protected from association with errors.

9.2	Informal Trial Administration The Supplier will be required to conduct the trials in order to maximise the qualitative information gained. Because the trials are small scale, and the samples will not be representative, any quantitative data will have only limited value and may not be worth collecting. The required size of informal trialling will be defined in the call off. The Supplier must provide all necessary materials to schools. Materials must not be photocopied within schools during the Trialling window. There will be no access arrangements available for these trials. Because the feedback from these trials is qualitative, Suppliers should encourage the item writers to conduct the administrations in schools, as they understand fully what the question is trying to do and will be able to use the feedback directly. For informal trialling, no pupil information needs to be captured. Feedback from informal trialling should mainly be qualitative.
9.3	DfE reserves the right to observe a small number of schools during administration of the tests for quality assurance purposes and to obtain feedback on test materials from schools, pupils and/or administrators directly. The Supplier must seek permission for DfE representatives to observe any administration visits from schools during school recruitment.

10 Secure administration of assessment instruments in schools

No	Requirement
10.1	The Supplier must ensure all administrators have suitable identification prior to any visit to enable the school to check their identity.
10.2	The Supplier must produce administration guidance. The test administration guidance is an important part of the test and this should be handed over to the agency alongside the trial test materials. This must include full written instructions and expectations of their role, administration guidance, relevant information on the type of administration being used, security procedures, information on sending and receiving materials to and from the Supplier, relevant information to help the administrator answer any questions from the school (and contact details for a named individual if the guidance does not answer a question posed by the school). Sign-off of these materials should be obtained from DfE for each call-off.
10.3	The Supplier must ensure the secure return of all test materials, used and unused, from each school visit. This includes any pupil background data forms, questionnaires and supporting documentation. Administrators must ensure that all materials are accounted for at all times. This will include counting all materials on arrival at the school and ensuring that material is accounted for before the administrator(s) leave(s) the schools. While in schools, all materials must remain in the same room as the administrator(s). The administrator must provide a list of the contents (manifest) of each package within the package and send via email to the Supplier as the package is picked up for return to the Supplier. The manifest should not include information about the contents of the test or pupils participating in the Trial or Sample. The Supplier must check the contents of all packages against the manifest once it is delivered. Any discrepancies must be reported to DfE immediately, providing details of the process in place to investigate and recover lost and missing materials.

11 Administration reports

No	Requirement
11.1	The Supplier must produce (an) administration report(s) for each subject. A. The specific requirements will be outlined in call-offs resulting from this framework. They are likely to include an indication of how the item performed. It would also include suggestions to improve the item based on feedback from trialling.

12 Printing

No	Requirement
12.1	Print quality and requirements The Supplier must print materials to the quality required, as defined below. Any variations to these specifications may be required in individual call-offs and will be identified at that point. • In most cases, materials for trialling will be printed in black and white. Covers for booklets may need to be printed on coloured paper to aid the management of trial administration. The colour of covers must take into account the method of data capture. Alternatively, the Supplier can choose to print in digital to support the supply of variable data and colours to covers. • Booklets are A4 in size and should be collated. The Supplier will produce 100% of all printed material required for informal trialling and as specified in handover arrangements in the call-off.

	The supplier is responsible for the quality of materials going forward to trialling and to handover. Significant proofing errors in final handover materials may be returned until rectified and the quality is appropriate. STA, however, will not provide a detailed proof for Suppliers to use in order to make the corrections.
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Section 4: Performance Monitoring Requirements

The following key performance indicators are indicative. Actual key performance indicators will be specified in each call-off.

Managing key performance requirements, highlighted below, is essential to delivering this project on-time and in full. Key performance requirements will be monitored throughout the life of the project and form part of the contractual relationship. Please review and confirm acceptance within your submission.

No.	Service Requirement		Performance Measure
1	Project management	Full attendance at project start-up meeting, process walk through, project management meetings and lessons learnt meeting (face to face and teleconference as necessary). Progress reports, including risk and issues reporting to be submitted. Issue reports to be written for any deviations from the agreed contract. Security incident reports to be written for all breaches and potential breaches of security and confidentiality.	100% – meeting documents to be provided at least 24 hours prior to organised project meetings. MI submitted daily during agreed windows.
2	Handover of text / context ideas	Supplier to provide a list of ideas for contexts / topics at the outset of the project	100%
3	Handover of materials for pre-trial meeting	Supplier to update the Administration instructions and handover materials going to trial.	100%
4	Pre-trial meeting (when required)	Attendance at pre-trial to agree possible changes prior to trialling and which items to trial.	100%

5	Informal Trialling (when required)	Trialling to take place in a small number of schools	100%
6	Interim Handover	Handover of materials and report post informal trialling, outlining the performance of items in the trial and suggestions for improvement, as per the specifications.	100%
7	Interim Review meeting	Review trial outcomes and agree changes.	
8	Final Handover	High quality materials are handed over to the STA on time and with all specifications met.	100%
9	Acceptance of Final Handover materials	All materials are accepted by the STA.	100%

Overview of Key Outputs (Typical item writing ITQ)

For each call-off there will be a specific set of outputs Suppliers must deliver to ensure successful delivery. An **example** of key outputs for a typical call-off is provided below in Table x with some indicative timelines. This is for illustrative purposes only at this stage of the process, and for each call-off DfE will provide a definitive set of key outputs and milestone dates for delivery required for each Item Writing package.

Table x: Key outputs of the framework

No	Deliverables/Outputs	Acceptance Criteria	Due Date
1	Project Management Start-Up Meeting – FIXED DATE Supplier will provide: - Detailed plan for item and mark scheme production for review and joint sign-off - Detailed plan for when checkpoints will be held for review and joint sign-off - Detailed project risk and issue log (Risk Log) for review and joint sign-off - Project Initiation Document (PID) STA will provide: - Clarification of any item writing requirements	Project Director / Project manager (or equivalent) attend the Start-Up Meeting and provision of listed documents by agreed date.	No later than XX October 20XX
2	Checkpoint Meetings and Management Information To attend regular Checkpoint meetings at least once a month, although they may need to be more frequent at some stages of the project. These	Project manager (or equivalent) attends each Checkpoint meeting on	To be agreed at start-up meeting

No	Deliverables/Outputs	Acceptance Criteria	Due Date
	meetings may be held as telephone conference calls. Checkpoint reports to be submitted to STA two working days in advance of each Checkpoint meeting.	agreed date and submission of Checkpoint report two working days in advance of each checkpoint meeting.	
3	Proposal of contexts (science & English reading) or texts (English reading) Supplier will provide suggested contexts for science questions or reading texts, story arcs where appropriate and / or suggested texts (for English reading). These will be reviewed by STA and approval will be given for their use prior to the commencement of the item writing phase.	Sufficient, suitable contexts or texts proposed to allow development of items to fulfil the requirements of the call-off.	To be agreed at start-up meeting
4	Handover of materials for the pre-trial meeting All materials written for the project to be handed to STA in both electronic and hard copy versions. There is an expectation that the item writing supplier writes more items than needed because of attrition following review and informal trialling.	Sufficient materials submitted to be able to handover the required material at the end of the project and allow for some attrition throughout the process.	One week prior to the pre-trial meeting

No	Deliverables/Outputs	Acceptance Criteria	Due Date
5	Pre-Trial Meeting To agree which items need to be informally trialled and to agree where any amendments may be required to items prior to trialling taking place. To agree the format and content of the informal trialling report. The outcome of this meeting will determine the final cost for informal trialling. Not all subjects require this meeting. If it is not required, it will be stated in each ITQ	Project manager and item writers (or equivalent) attend meeting on agreed date.	In sufficient time to allow amendments to be carried out before trialling starts (mid to end June)
6	Informal Trialling– Critical Step It would be desirable from a school and agency perspective for informal trialling to be completed before the end of the summer term (in the UK). It is preferred that trialling takes place in the UK. If the agency is not UK based, please give two cost options: one for trialling in the home country and one for trialling in the UK. Items amended as per pre-trial meetings and agreed items informally trialled with at least 25 pupils each.	Required amendments completed before trialling. 100% of agreed items trialled with specified number of schools and pupils. STA are notified of possible trialling locations two weeks before the start of the trial.	Complete no later than March 201x

No	Deliverables/Outputs	Acceptance Criteria	Due Date
7	Interim Handover – Critical Step Provide electronic copies of all draft item and mark schemes, informal trialling report and draft item classification spreadsheet(s). Items and mark schemes to include suggested mark-up or amendments as a result of feedback from informal trialling, and there should be clear evidence of how those amendments are intended to improve item functioning. Any items which are rejected after informal trialling must be substituted with a suitable replacement item and accompanying mark scheme, including any proposed amendments if appropriate. Provide a summary table demonstrating the coverage of the interim handover materials against the number of marks, response types, content and cognitive domains specified. Handover three hardcopies of all Informal Trialling booklets and mark schemes/coding frames. The Supplier must handover InDesign files (STA uses CC 2014) of at least 10% of the total marks required at the interim handover stage in order for STA to check that the materials meet the Design Specification (see Annex G). The remaining items to be handed over in InDesign or MS Word (or compatible) format.	100% of drafts of all materials required for completion of work package(s) received electronically by agreed date and to criteria specified in the main body of this ITQ. All items informally trialled and being considered for Final Handover have received positive feedback from teachers and / or pupils; or are submitted with amendments and supporting evidence from trialling for those amendments.	No later than June 20XX

No	Deliverables/Outputs	Acceptance Criteria	Due Date
8	Interim Review Meeting Meeting with STA and item writers to review materials and outputs from informal trialling. Meeting will be used to discuss informal trialling – key messages, problems, discuss the report, resolve issues identified with items and agree any changes to items. In the report the agency must say why the change is suggested and what evidence there is for the change. Any further changes to materials will be agreed at this meeting. The Supplier will complete these and any other agreed amendments prior to final handover.	Project Manager / Lead Item Writer attend Interim Review meeting on agreed date.	Week beginning x June 20XX
9	Final Handover – Critical Step Hard Copy Handover - Supplier to hand over hard copies of the items and mark schemes, and example pupil scripts. The handover is to take place in a meeting at STA offices wherever possible.	100% of specified hard copy materials received at STA by agreed date and materials are of appropriate quality as listed under Performance Requirements.	No later than x July 20XX

No	Deliverables/Outputs	Acceptance Criteria	Due Date
	Electronic Handover –Supplier to hand over electronic files of the items and mark schemes, source references, artwork, copyright statement and the item classification grid. Assignment/licences of IPR for DfE’s benefit completed. If STA’s portal or secure file transfer service is unavailable, an encrypted memory stick will be provided by STA. A template for the item classification grid is provided at Annex B.	Receipt of electronic materials specified and attendance at Final Handover meeting on agreed date (“Final Handover Date”)	
10	Acceptance of Final Handover materials – Critical Step Materials must be handed over as per specification, so that materials match templates as required, and all other instructions are followed. If any errors are found following Final Handover or the materials are not compliant with this specification, all materials will be returned to the supplier for full checking and correction. Final payment will be withheld until this is completed. Fully checked and corrected materials should be returned no later than two weeks after the Final Handover date. STA will notify Suppliers once all Acceptance Criteria have been met.	100% of specified of materials with STA no later than two weeks after Final Handover Date. All materials to be error free.	No later than two weeks after Final Handover Date

Schedule 2 - Charges and Payments

1 Charges

1.1 [to be populated from the successful tender]

2 Schedule of Payments

2.1 The Payment Schedule will be shown in each Call-Off Contract.

2.2 Funds allocated to a particular expenditure heading in the Payment Schedule are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only. The allocation of funds in the Payment Schedule may not be altered except with the prior written consent of the Department.

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

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

3 Invoicing

3.1 Invoices shall be prepared by the Supplier monthly in arrears and shall be detailed against completion of the Milestones and Key Milestones specified in the Call-Off Contract and the expenditure headings set out in the Payments Schedule. The Supplier or his or her nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Supplier on the Service in accordance with the Agreement and that the invoice does not include any costs being claimed from any other body or individual or from the Department within the terms of another contract.

3.2 Invoices should be sent within 30 days of the Department's Acceptance to: Purchase to Pay, Shared Services, 3rd floor Companies House, Crown Way, Cardiff, CF14 3UW.

3.3 The Supplier shall ensure that its invoices contain the following:

3.3.1 a unique invoice number;

3.3.2 the Service(s) provided to which the relevant Charge(s) relate;

3.3.3 the Agreement reference number;

3.3.4 the Call-Off Contract reference number;

3.3.5 the dates on which the Services to which each of the invoiced Charges relate were performed;

3.3.6 the methodology applied to calculate the Charges;

3.3.7 the total Charges gross and net of any applicable deductions and, separately, the amount of any disbursements properly chargeable to the Department under the terms of the Agreement;

- 3.3.8 details of any service credits or delay payments or similar deductions that shall apply to the Charges detailed on the invoice;
 - 3.3.9 reference to any reports required by the Department in respect of the Services to which the Charges detailed on the invoice relate (or, in the case of reports issued by the Supplier for validation by the Department, to any such reports as are validated by the Department in respect of the Services);
 - 3.3.10 the Supplier's full address, VAT number (if applicable) and the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 3.4 Each invoice shall at all times be accompanied by sufficient information (including any relevant Management Information) ("**Supporting Documentation**") to enable the Department to reasonably assess whether the Charges detailed thereon are properly payable. Any such assessment by the Department shall not be conclusive. The Supplier undertakes to provide to the Department any other documentation reasonably required by the Department from time to time to substantiate an invoice.
- 3.5 The Supplier shall submit all invoices and Supporting Documentation in such format as the Department may reasonably specify from time to time with a copy (including any Supporting Documentation) to the Contract manager (or such other person and at such place as the Department, acting reasonably, may notify to the Supplier from time to time).
- 3.6 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Department in writing.
- 3.7 The Supplier shall submit its invoice for the Charges in respect of all the Service Elements which are due after the successful completion of all such Service Elements.
- 3.8 Service Elements are only successfully completed when Acceptance has taken place in respect of those Service Elements in accordance with Clause 35 (Acceptance Testing).
- 3.9 The Supplier shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in the Department's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Department shall only be liable to reimburse so much (if any) of the expenditure disallowed as, in the Department's reasonable opinion after consultation with the Supplier, would reasonably have been required for that purpose.
- 3.10 If this Agreement is terminated by the Department due to the Suppliers insolvency or default at any time before completion of the Service, the Department shall only be liable under paragraph 2.1 of this Schedule 2 to reimburse eligible payments made by, or due to, the Supplier before the date of termination.
- 3.11 On completion of the Service or on termination of this Agreement, the Supplier shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Service. The final invoice shall be submitted not later than 30 days after the date of completion of the Service.
- 3.12 The Department shall not be obliged to pay the final invoice until the Supplier has carried out all the elements of the Service specified in the relevant Call-Off Contract.
- 3.13 It shall be the responsibility of the Supplier to ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the Department all amounts due to be reimbursed under this Agreement shall be deemed

to have been paid and the Department shall have no further liability to make reimbursement of any kind.

4 Taxation

4.1 All amounts payable by the Department to the Supplier stated in this Agreement are exclusive of VAT.

4.2 Where any payment is made under this Agreement pursuant to an indemnity, compensation or reimbursement provision and that sum is subject to a charge to taxation in the hands of the Department the sum payable shall be increased to such sum as will ensure that after payment of such taxation (which for this purpose shall include the utilisation of any tax relief) and after giving credit for any tax relief available in respect of the matter giving rise to the payment the Department shall be left with a sum equal to the sum that it would have received in the absence of such a charge to taxation.

Schedule 3 – Form of Call-Off Contract

Item Writing Framework Agreement – STA 0070
Call-Off Contract No:
Title:

Pursuant to the terms of the Item Writing Framework Agreement (STA 0246):

Service Commencement Date:	
Call-Off Contract End Date:	
Call-Off Contract Value:	
Relationship Manager for Department for Education:	
Contract Manager for the Department for Education:	
Relationship Manager for the Supplier:	

1. Background

[Insert]

2. Functional Requirements

Subjects:	
Level (or Other Measure) Assessed:	
Key Stage or Other Measure:	

3. Required Service Elements

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

Services [and Deliverables] Required:

4. Key Milestones

iD	Description	Key Milestone Acceptance Criteria	Completion Date	Evidence Required

5. Key Payment Milestones and Key Payment Milestones Dates

Payment will follow the completion of the Key Milestones listed at section 4. Key Payment Milestones are:

iD	Amount	Key Milestone Payment Date

6. Contract Management Arrangements

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

Signed for and on behalf of the Department for Education:

Name and Title:

Date:

Signed for and on behalf of the Supplier:

Name and Title:

Date:

Schedule 4 – Governance and Performance Monitoring

1. Service Management

1.1 The Supplier must demonstrate that, where there are plans to use a Subcontractor, the Subcontractor is reliable, available and can meet the obligations imposed on the Supplier under this Agreement. The Supplier must provide and maintain details of who these resources are, how they will be used and how they will be managed. The Supplier will provide the Department with its procurement strategy and selection criteria for all services which they intend to Subcontract. The Supplier will advise the Department of the progress of its procurement activities against the agreed plan and inform the Department of the nominated preferred bidder prior to contract award.

1.2 The Supplier must adopt quality standards across the range of activities and requirements in the Services. Quality should be built in from the start, not 'tested in' later. Relevant standards might include, but are not limited to, British or International standards in areas such as information security and quality management.

1.3 The Supplier must ensure that all project staff engaged in the delivery of the Services have a level of knowledge of the contractual terms and conditions commensurate with the level of their responsibility and involvement.

1.4 The Supplier shall nominate a quality manager who will act as the point of contact for quality issues and enforce a quality assurance methodology

2. Management Information

2.1 Management Information to be provided shall be specified in the relevant Call-Off Contract.

2.2 In addition, the Supplier must:

2.2.1 provide ad hoc information and/or reports as required by the Department;

2.2.2 provide Management Information within timescales and frequencies agreed with the Department to monitor system performance, availability and demand of take up of system functionality and reassure the Department of proper performance; and

2.2.3 provide access to the Department of the source data from which Management Information is generated

3. Contract Management Reviews

3.1 The Supplier shall be fully engaged on an on-going basis in regular Contract Management Reviews. These reviews provide an opportunity for the Department and the Supplier to discuss the end-to-end delivery of the Services which shall include but not be limited to:

3.1.1 planning;

3.1.2 progress;

3.1.3 risk management;

3.1.4 issue management;

3.1.5 continuous improvement;

3.1.6 proposed changes;

3.1.7 lessons learnt;

3.1.8 exit management.

3.2 The specific requirements for contract reviews shall be stated in the Call-Off Contract.

Schedule 5 – Change Control Procedures

1 Principles

1.1 The Agreement and Call-Off Contracts may be changed only in accordance with the Change Control Procedure as set out in this Schedule 5.

1.2 Neither Party shall unreasonably withhold its agreement to any change.

1.3 Until such time as a change is made in accordance with the Change Control Procedure, the Supplier shall, unless otherwise agreed in writing, continue to supply the Services as if the request or recommendation had not been made.

1.4 Any discussions which may take place between the Parties in connection with a request or recommendation before the authorisation of a resultant change to the Services shall be without prejudice to the rights of either Party.

1.5 Any work undertaken by the Supplier, its Subcontractors or agents which has not been authorised in advance by a change to the Services and which has not been otherwise agreed in accordance with the provisions of this Schedule 5 shall be undertaken entirely at the expense and liability of the Supplier.

5 Procedures

5.1 Discussion between the Parties concerning a change to the Services shall result in any one of the following:

5.1.1 no further action being taken;

5.1.2 a request to change the Services by the Department; or

5.1.3 a recommendation to change the Services by the Supplier.

5.2 Where a written request for an amendment is received from the Department, the Supplier shall, unless otherwise agreed, submit a CCN to the Department within 2 weeks of the date of the request.

5.3 A recommendation to amend by the Supplier shall be submitted as a CCN direct to the Department at the time of such recommendation.

5.4 A model CCN is provided at Annex 1 to this Schedule 5.

5.5 Each CCN shall contain:

5.5.1 the title of the change;

5.5.2 the originator and date of the request or recommendation for the change;

5.5.3 the reason for the change;

5.5.4 full details of the change including any specifications;

5.5.5 the price, if any, of the change;

5.5.6 a timetable for implementation together with any proposals for acceptance of the change;

- 5.5.7 a schedule of payments if appropriate;
- 5.5.8 details of the likely impact, if any, of the change on other aspects of the Services;
- 5.5.9 the date of expiry of validity of the CCN; and
- 5.5.10 provision for signature by the Department and by the Supplier.
- 5.6 For each CCN submitted the Department shall, within the period of the validity of the CCN:
 - 5.6.1 allocate a sequential number to the CCN;
 - 5.6.2 evaluate the CCN and, as appropriate;
 - 5.6.3 request further information;
 - 5.6.3.1 approve the CCN; or
 - 5.6.3.2 notify the Supplier of the rejection of the CCN; and
 - 5.6.4 arrange for two copies of an approved CCN to be signed by or on behalf of the Department and the Supplier.
- 5.7 A CCN signed by both parties shall constitute an amendment to this Agreement pursuant to Clause 14.

Schedule 5 – Annex 1 – Change Control Note

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

Schedule 6 – The Departmental Dependencies

6.1 The Department acknowledges that the Supplier is dependent on the Department carrying out the actions in paragraph 6.2.

6.2 The Department will:

6.2.1 supply access to their secure collaboration site for the exchange of confidential data and documents;

6.2.2 maintain regularly update a decision log throughout each Call-Off Contract;

6.2.3 organise regular project management meetings during the course of each call-off, on at least a monthly basis, but more commonly weekly. Minutes will be produced and circulated by the Department;

6.2.4 provide a clear trialling model for each Call-Off Contract as part of the tendering process;

6.2.5 provide specifications for the provision of data files by agreed dates;

6.2.6 provide specifications for the production of reports by agreed dates;

6.2.7 agree a schedule at the outset of each Call-Off Contract and will ensure that all deadlines relating to their provision of any aspects of the project are met. In particular, the Department will deliver final copies of test materials by agreed dates;

6.2.8 ensure that final trialling materials are fully quality checked and error free before sending to the Supplier;

6.2.9 apply suitable formatting to any trialling materials to enable the efficient processing of materials by the Supplier which might mean keeping space for bar codes and numbers or applying registration marks to enable data capture (where this is part of the Call-Off Service);

6.2.10 supply any specific batching instructions to the Supplier by agreed dates;

6.2.11 organise regular senior supplier meetings during the course of each call-off. Minutes will be produced and circulated by the Department; and

6.2.12 when sent any confidential material by the Supplier, check that all materials have been received and confirm that to the Supplier on the day of receipt.

Schedule 7 – Template for Exit Management Plan

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

1 Document History (Section 1)

Document location

[Insert document location details.]

Revision history

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

Version Number	Issue/Revision Date	Previous Revision Date	Summary of Changes	Changes Marked

Required approvals

[INSERT details of the required approvals.]

Name	Title	Date of Issue	Version

Distribution

[INSERT distribution list.]

Name	Title	Date of Issue	Version

2 Purpose (Section 2)

2.1 This Exit Management Plan sets out the Parties' obligations with regard to facilitating the orderly transfer of the Services during the Exit Phase and the treatment of any relevant assets, materials, software, data, subcontracts and people to a Successor Operator (including STA), on the expiry or termination of the Agreement or of any Service.

2.2 This Plan will cover 'Routine' Exit (including Exit on Termination for Convenience), Exit for Termination and Exit for Partial Termination including the various scenarios that may lead to Termination identifying the implications of these and the actions that shall be required to be undertaken as a result of Termination at the various stages.

2.3 Within each Exit scenario, there are two different types of exit activity:

2.3.1 those that are foreseeable, predictable and capable of being planned in detail as it relates to the “fixed” activities that will always take place on exit, irrespective of the cause or nature of the exit, and

2.3.2 individual services that may or may not be used, depending on the cause or nature of the termination, the point in the test cycle when termination occurs and the appetite of any incoming supplier to take advantage of them.

2.4 This Exit Management Plan is divided into the following principal sections:

Section 1: Document History

Section 2: Purpose

Section 3: Exit Management Structures

Section 4: Required actions

Section 5: Timetable

Section 6: Charging arrangements

3. Exit management Structures (Section 3)

3.1 This Section 3 describes the management structures and processes to be followed by the parties in order to facilitate the orderly transfer of the Services to a Successor Operator.

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

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

Exit Project Board

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

Exit Project Reporting

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

4. Required Actions (Section 4)

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

Subsection 4.2: Supplier Assets

Subsection 4.3: Systems and Software

Subsection 4.4: Data

Subsection 4.5: Contracts

Subsection 4.6: Documentation

Subsection 4.7: Training and knowledge transfer

Subsection 4.8: Staff matters

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

Supplier Assets (Subsection 4.2)

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

Systems and Software (Subsection 4.3)

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

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

- ceasing all non-critical Software changes (by agreement with STA);
- notifying subcontractors of procedures to be followed during the Exit Phase and providing management to ensure these procedures are followed;
- providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Successor Operator after the Exit Phase;
- delivering to STA the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the Exit Phase;

- providing details of work volumes and staffing requirements over the 12 month period immediately prior to the Exit Phase;
- with respect to work in progress as at the end of the Exit Phase, documenting the current status and stabilising for continuity during transition;
- providing STA with any problem logs which have not previously been provided to it;
- providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Exit Phase;
- providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Exit Phase;
- reviewing all Software libraries used in connection with the Services and providing details of these to the Successor Operator;
- making available to the Successor Operator expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by STA (acting reasonably) at the time of termination or expiry;
- assisting in establishing naming conventions for the new production site;
- analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- generating a computer listing of all relevant Source Code in a form and on media reasonably requested by STA;
- agreeing with STA a handover plan for all of the Supplier's responsibilities as set out in the STA Security Policy as set out in Schedule 12, and co-operating fully in the execution of the agreed plan, providing skills and expertise of a suitable standard;
- delivering copies of the production databases (with content listings) to the Successor Operator's operations staff (on appropriate media) as reasonably requested by STA;
- assisting with the loading, testing and implementation of the production databases;
- assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- in respect of the maintenance and support of the System, providing historical performance data for the previous 12 months prior to the Exit Phase;
- assisting in the execution of a parallel operation of the maintenance and support of the System until the end of the Exit Phase or as otherwise specified by STA;

- providing an information pack listing and describing the Services for use by STA in the procurement of replacement Services;
- answering all reasonable questions from STA or its Successor Operator regarding the Services;
- agreeing with the Successor Operator a plan for the migration of all STA Data and databases, and co-operating fully in the execution of the agreed plan, providing skills and expertise of a reasonably acceptable standard;
- providing access to the Successor Operator until the expiry of six months after the Exit Phase for the purpose of the smooth transfer of the Services:
- to information and documentation relating to the Services that is in the possession or control of the Supplier or its subcontractors (and the Supplier agrees and shall procure that its subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
- following reasonable notice and during the Supplier's normal business hours, to members of the Supplier's personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Subcontractors.

Data (Subsection 4.4)

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

Contracts (Subsection 4.5)

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

Documentation (Subsection 4.6)

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

Training and knowledge transfer (Subsection 4.7)

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

Staff matters (Subsection 4.8)

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

6 Timetable and milestones (Section 5)

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

7 Charging Arrangements (Section 6)

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

Schedule 8 – Call-off Procedure

1. AWARD PROCEDURE

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

1.2 If a Contracting Authority can determine that:

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

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

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

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

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

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

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

2. DIRECT ORDERING WITHOUT A FURTHER COMPETITION

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

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

2.2.1 develop a clear Statement of Requirements;

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

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

3. FURTHER COMPETITION PROCEDURE

Contracting Authority's Obligations

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

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

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

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

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

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

(i) invite the Framework Suppliers identified in accordance with paragraph 3.1.1 to submit a tender in writing for each proposed Call Off Contract to be awarded by giving written notice by email to the relevant Supplier Representative of each Framework Supplier and via submitting the tender through an e-sourcing system such as Jaggaer or any other system the Department is using;

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

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

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

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

(a) state the Services Requirements;

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

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

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

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

The Suppliers Obligations

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

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

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

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

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

(c) a proposal covering the Services Requirements; and

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

3.2.4 The Supplier agrees that:

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

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

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

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

4. E-AUCTIONS

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

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

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

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

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

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

4.4.3 any limits on the values which may be submitted;

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

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

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

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

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

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

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

4.7 The Supplier acknowledges and agrees that:

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

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

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

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

4.8.1. a date and time fixed in advance;

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

4.8.3. when all the phases have been completed.

5. NO AWARD

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

6. RESPONSIBILITY FOR AWARDS

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

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

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

7. CALL OFF AWARD PROCEDURE

7.1 Subject to paragraphs 1 to 6 above, a Contracting Authority may award a Call Off Contract with the Supplier by sending (including electronically) a signed Order Form substantially in the form (as may be amended or refined by the Contracting Authority in accordance with paragraph 3.1.2 above) of the Template Order Form set out in Framework Schedule 4 (Template Order Form and Template Call Off Terms). The Contracting Authority also reserve the right to procure any calls off via an E-Sourcing system such as Jaggaer or any others.

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

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

Schedule 9 – Call-off Award Criteria

1. GENERAL

- 1.1. This Framework Schedule 9 is designed to assist Contracting Authorities seeking to award a Call Off Contract on the basis of direct award or through reopening competition under a Further Competition Procedure in accordance with the Call Off Procedure.
- 1.2. A Call Off Contract shall be awarded on the basis of most economically advantageous tender ("MEAT") from the point of view of the Contracting Authority.
- 1.3. This Framework Schedule 9 includes details of the evaluation criteria and any weightings that will be applied to that criteria.

2. PART A: DIRECT AWARD

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

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

3. PART B: FURTHER COMPETITION AWARD CRITERIA

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

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

Schedule 10 – Departmental Security Standards



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