



Education & Skills
Funding Agency

Contract Type	Contract for Services
Funding Period	1 October 2018 to 31 March 2019
Between	the Secretary of State for Education (acting through the Education and Skills Funding Agency)
And	PROSPECTS SERVICES
Funding for	National Careers Service
Contract Number	ESFA-14897

ACCEPTANCE BY PRIME CONTRACTOR

By accepting this contract via the Skills Funding Service the person taking this action on behalf of the Prime Contractor represents and warrants that the Prime Contractor has read and understood this Contract, the Prime Contractor agrees to be bound by this Contract and that he/she is duly authorised to accept this Contract and legally bind the Prime Contractor.

This Contract is made on the date the Contract is digitally signed by the Prime Contractor on the Skills Funding Service.

**SIGNED FOR AND ON BEHALF OF
THE SECRETARY OF STATE FOR EDUCATION**

acting through the Education and Skills Funding Agency
by Eileen Milner, Chief Executive of the Education & Skills Funding Agency

**CONTRACT FOR THE AREA BASED SERVICE OF THE
NATIONAL CAREERS SERVICE**

01 October 2018 – 31 March 2019

TERMS AND CONDITIONS

Terms and Conditions

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Education & Skills
Funding Agency

Terms and Conditions

This Contract is made on the date the Agreement is digitally signed by the Contractor on the Skills Funding Service between:

PROSPECTS SERVICES

Prospects House
19 Elmfield Road
Bromley
Kent
BR1 1LT

Company Registration Number:
03042176

AND

THE SECRETARY OF STATE
FOR EDUCATION ACTING
THROUGH THE EDUCATION
AND SKILLS FUNDING
AGENCY, AN EXECUTIVE
AGENCY OF THE
DEPARTMENT FOR
EDUCATION
CHEYLESMORE HOUSE
QUINTON ROAD
COVENTRY
CV1 2WT

Hereinafter called
The Prime Contractor

Hereinafter called
the ESFA

GENERAL TERMS AND CONDITIONS

It is agreed as follows.

1. Definitions

“Acquired Rights Directive”	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of
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	undertakings or businesses, as amended or re-enacted from time to time;
“Affected Party”	The Party seeking to claim relief in respect of a Force Majeure Event.
“Area”	Means the area of WEST MIDLANDS AND STAFFORDSHIRE in respect of which the Prime Contractor is appointed to supply the Services, as more particularly described in the map set out in Schedule 1.
“Baseline Personnel Security Standard (BPSS)”	Means a level of security clearance described as pre-employment checks in the National Vetting Policy. Further information can be found at: https://www.gov.uk/government/publications/government-baseline-personnel-security-standard
“Certified Professional (CCP)”	is a National Cyber Security Centre (NCSC) scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors. See website: https://www.ncsc.gov.uk/scheme/certified-professional
“Certified Cyber Security Consultancy (CCSC)”	is NCSC's approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. This approach builds on the strength of CLAS and certifies the competence of suppliers to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors. See website: https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy
“Code of Connection”	The document that outlines the conditions that must be met and the information that must be provided in order to use the National Careers Service Data Sharing Service.
“Commencement Date”	means the date on which the Prime Contractor is to start the Implementation Services being 9 July 2018.
“Confidential Information”	means any information, including Personal Data as defined by the General Data Protection Regulation (Regulation (EU) 2016/679), and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Parties including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being

	confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential"). Confidential Information does not include such information which: a) is or becomes public knowledge (other than by breach of Clauses 6.2.2 and 6.2.4); b) was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party; or c) must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act or the Environmental Information Regulations.
“Contract”	Means the contract between the ESFA and the Prime Contractor governing the supply of the Area Based Service, as comprised of the Terms and Conditions (and all schedules, appendices and attachments thereto), the Code of Connection, the Funding Rules, the ITT and the Prime Contractor’s response to it.
“Contract Period”	means the period starting on the Services Start Date and ending on the earlier of the Expiry Date or the Termination Date.
“Contract Year”	means each successive twelve (12) month period commencing on 01 April during the Contract Period and for these purposes the first Contract year shall be the period starting on 01 October 2018 and ending on 31 March 2019.
“Control”	means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly.
“Customer”	means Primary Customers and Secondary Customers. For these purposes Primary Customers are adults over 19 (or 18 and over for those who are not in education employment or training) with a focus on the Priority Group Customers.
“Customer Data”	means the data supplied by the Prime Contractor to the ESFA in respect of each Customer in support of a claim for payment for an Outcome in relation to that Customer

	pursuant to the Funding Rules and Clause 21 of these Terms and Conditions and for these purposes an “Outcome” has the meaning specified in the Funding Rules;
“Customer Files”	means all files (whether electronic or otherwise) containing Personal Data gathered or used by the Prime Contractor under or in connection with the supply of the Services to the Customers pursuant to this Contract
“Customer Satisfaction Outcome Cap”	Means the maximum sum which can be invoiced by the Prime Contractor in respect of the Customer Satisfaction Outcome, as specified in the Funding Rules.
“Cyber Essentials” “Cyber Essentials Plus”	Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme. There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers: https://www.iasme.co.uk/apply-for-self-assessment/
“Data Collection Guidance”	means the operational guidance documents issued by the ESFA for use with the National Careers Service Data Collection System
“Data Protection Laws”	means the Data Protection Act 2018 and Electronic Communications (EC Directive) Regulations 2003 and any other data protection Laws and regulations applicable in the UK (or in any relevant part thereof), including, if and when it is in force, the General Data Protection Regulation (EU) 2016/679 or similar and any codes of practice, guidelines and recommendations issued by the Information Commissioner, any replacement body or other relevant supervisory authority, all of which are current at the time of any Data processing by the Prime Contractor (and in the event of any conflict between the Data Protection Laws and Law, Data Protection Laws shall take precedence).
“Declaration of Subcontractors”	Means a document substantially in the format set out in Schedule 5 which shall be supplied by the Prime Contractor to the ESFA in accordance with Clause 5.
“Employee Liabilities”	all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or

	investigation related to employment including in relation to the following: (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation; (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; (d) compensation for less favourable treatment of part-time workers or fixed term employees; (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; (f) employment claims whether in tort, contract or statute or otherwise; and (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
“Employment Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
“ESFA Data”	is any data or information owned or retained in order to meet ESFA business objectives and tasks, including: (a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Prime Contractor by or on behalf of the ESFA; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data (as defined in the General Data Protection Regulation (Regulation (EU) 2016/679)) for

	which the ESFA is the Controller (the General Data Protection Regulation (Regulation (EU) 2016/679));
“Exempt Information”	means any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Contract or otherwise relating to the Prime Contractor, which potentially falls within an exemption to FOIA (as set out therein).
“Exit Plan”	the plan produced and updated by the Prime Contractor during the term of this Contract in accordance with Schedule [3] (Exit Management).
“Expiry Date”	means 30 September 2021 or such other later date as is notified in writing to the Prime Contractor by the ESFA in accordance with Clause 2.2.
“FIPS 140-2”	means the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled ‘Security Requirements for Cryptographic Modules’. This document is the de facto security standard used for the accreditation of cryptographic modules.
“Force Majeure Event”	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including without limitation acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Prime Contractor or the Prime Contractor Personnel or any other failure in the Prime Contractor’s or a Sub-Contractor’s supply chain.
“FOIA”	means the Freedom of Information Act 2000 and all regulations made there from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in Clause 6.
“FOIA Notice”	means a decision notice, enforcement notice and/or an information notice.
“Funding Rules”	means the document which sets out the detailed requirements with which the Prime Contractor must

	comply in respect of delivery under this Contract and the basis on which the Prime Contractor receives funding, as may be updated and amended from time to time in accordance with their terms.
“Good Industry Standard”	means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
“GSC” or “GSCP”	means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: https://www.gov.uk/government/publications/government-security-classifications
“HMG”	means Her Majesty’s Government
“ICT”	means Information and Communications Technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
“Implementation Period”	means the period from 09 July 2018 to 30 September 2018 (inclusive).
“Implementation Services”	means the services to be provided in accordance with Schedule 7.
“Insolvency Event”	Means: (a) the Prime Contractor suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: i. (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or ii. (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; (b) the Prime Contractor commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a

	company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of the Prime Contractor with one or more other companies or the solvent reconstruction of the Prime Contractor; (c) a person becomes entitled to appoint a receiver over the assets of the Prime Contractor or a receiver is appointed over the assets of the Prime Contractor; (d) a creditor or encumbrancer of the Prime Contractor attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the Prime Contractor's assets and such attachment or process is not discharged within 14 days; (e) the Prime Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; (f) where the Prime Contractor is a company, a LLP or a partnership: i. a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Prime Contractor other than for the sole purpose of a scheme for a solvent amalgamation of the Prime Contractor with one or more other companies or the solvent reconstruction of that the Prime Contractor, ii. application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the Prime Contractor, iii. (being a company or a LLP) the holder of a qualifying floating charge over the assets of the Prime Contractor has become entitled to appoint or has appointed an administrative receiver, or iv. (being a partnership) the holder of an agricultural floating charge over the assets of the Prime Contractor has become entitled to appoint or has appointed an agricultural receiver; or (g) any event occurs, or proceeding is taken, with respect to the Prime Contractor in any jurisdiction
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	to which it is subject that has an effect equivalent or similar to any of the events mentioned above
“Intellectual Property”	Is any patent, registered design, copyright, database right, design right, topography right, trade mark, trade name, application to register any of the aforementioned rights, trade secret, inventions, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world including, without limitation: (a) any renewals, revisions and extensions created or provided by the Laws of any country; (b) all rights of action and remedies (including but not limited to an injunction, damages and/or an account of profits) in relation to past infringements; and (c) the right to apply for registration of any such rights in any country of the world;
“Inspectorates”	means one, any or all of the inspectorates: Office for Standards in Education, Children’s Services and Skills (OFSTED), Her Majesty’s Inspectorate for Education and Training in Wales (Estyn), the Quality Assurance Agency for Higher Education, the Office for Students, and the Care Quality Commission (CQC).
“ISO/IEC 27001” “ISO 27001”	means the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	means the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	means the document which specifies requirements to plan, establish, implement, operate, monitor, review, maintain and continually improve a documented management system to protect against, reduce the likelihood of occurrence, prepare for, respond to, and recover from disruptive incidents when they arise.
“IT Health Check (ITHC)”	means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.

“ITT”	Means the Invitation to Tender document incorporated at Schedule 4.
“Law”	Means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Prime Contractor is bound to comply.
“Local Enterprise Partnership (LEP)”	means a formalised partnership between local authorities to determine local economic priorities and lead economic growth and job creation within its area.
“Losses”	Means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Maximum Contract Value”	means, in relation to the Area, the maximum sum which may be invoiced by the Prime Contractor to the ESFA in respect of all the Outcomes achieved within any Contract Year, as specified in Schedule 6 and as updated for each Contract Year in accordance with Schedule 6 and which shall be allocated in the manner specified in the Funding Rules.
“Minor Breach”	shall have the meaning given to it in Clause 25.4.
“National Targets”	Means the national targets for the achievement of an Outcome in respect of customers seen, as specified in the Funding Rules, and as amended from time to time in accordance with the Contract.
“National Careers Service”	Means the National Careers Service, which is comprised of the Area Based Services, the National Careers Helpline and the National Website. For the avoidance of doubt this Contract governs only the Area Based Service to be provided by the Contractor in the Area. **Please note, the ITT refers to the National Careers Helpline as the National Contact Centre***
“National Careers Helpline”	Means the national careers helpline capability that is part of the National Careers Service and which provides personalised and responsive careers information, advice

	and guidance to young people and adults over the telephone, and through other channels including digital and social media platforms, but specifically not face-to-face.
“NCSC”	means the National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Authority for Information Assurance.
“OFSTED”	means the Office for Standards in Education, Children’s Services and Skills.
“OFFICIAL”	means the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.
“OFFICIAL-SENSITIVE”	means a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the Government Security Classification Policy.
“Outcomes”	Means the Outcomes specified in the Funding Rules, against which the Prime Contractor will be paid in consideration of the supply of the Services.
“Partial Termination”	means the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 26.1 (<i>Termination by the ESFA</i>) or Clause 26.3 (<i>Termination by the Prime Contractor</i>).
“Parties”	means the ESFA acting on behalf of the Crown and the Prime Contractor.
“Performance Standards”	Means the Performance Standards which form part of the Contract, as updated and amended from time to time in accordance with their terms.
“Premises”	means the location(s) where the Services are to be performed, as detailed in the Contract.
“Primary Customers”	Means adult people who need information, advice and guidance (IAG) for themselves.
“Priority Group Customers”	Means: a) Low skilled adults without a level 2 qualification;

	b) People with special educational needs or disabilities; c) Young people aged 18-24 not in education, employment or training; d) Adults unemployed for over 12 months; e) Single parents with at least one dependent child living in the same household; and f) Adults aged 50 and over who are unemployed or at demonstrable risk of redundancy.
“Prime Contractor Personnel”	means all persons employed or engaged by the Prime Contractor, including directors, officers and employees, together with the Prime Contractor’s servants, agents, consultants and Sub-Contractors (and all persons employed or engaged by any Sub-Contractor, including directors, officers and employees, together with the Sub-Contractor’s servants, consultants, agents, Contractor’s and Sub-Contractors) engaged in the performance of the Prime Contractor’s obligations under this Contract;
“Regulatory Body”	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate or investigate the matters dealt with in this Contract or any other affairs of the Prime Contractor or the ESFA, including, without limitation OFSTED.
“Relevant Transfer”	Means a transfer of employment to which the Employment Regulations applies.
“Replacement Prime Contractor”	Means any third party service provider of Replacement Services appointed by the ESFA from time to time (or where the ESFA is providing replacement Services for its own account, the ESFA).
“Replacement Services”	Means any services which are the same as or substantially similar to any of the Services and which the ESFA receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the ESFA internally and/or by any third party.
“Required Action”	has the meaning given to it in Clause 28.

“Secondary Customers”	Means people who use the National Careers Service products and tools to support Primary Customers. Secondary Customers will either be: i. Professional Careers Advisers, ii. Intermediaries. This group consists of teachers, parents, advocates, Jobcentre Plus work coaches and others.
“Secure Sanitisation”	means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. Some forms of sanitisation will allow you to re-use the media, while others are destructive in nature and render the media unusable. “Securely Sanitised” shall be interpreted accordingly. Guidance can be found at: https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media .
“Security and Information Risk Advisor (SIRA)”	Means the role so defined under the NCSC Certified Professional (CCP) Scheme. See also: https://www.ncsc.gov.uk/articles/about-certified-professional-scheme
“Security Readiness Review”	A review of the security controls, practices and policies put in place by Prime Contractors to protect the confidentiality, integrity and availability of the National Careers Service prior to the start of the Contract.
“Security Standards”	means the ESFA’s security policy or any standards, procedures, process or specification for security that the Prime Contractor is required to deliver.
“Serious Breach”	shall have the meaning given to it in Clause 25.3.
“Services”	means the services to be provided by the Prime Contractor as set out in the Contract, but shall not include the Implementation Services.
“Services Start Date”	means 01 October 2018.
“Sub-Contract”	Means any contract or agreement (or proposed contract or agreement) between the Prime Contractor (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Prime Contractor (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof, which must comply with the terms of Clause 5.

“Sub-Contractor”	any third party with whom: (a) the Prime Contract enters into a Sub-contract; or (b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party.
“Step-In Notice”	has the meaning given in Clause 28 (<i>Step-In Rights</i>);
“Step-In Trigger Event”	(a) any event falling within the definition of a Serious Breach by the Prime Contractor; (b) a default by the Prime Contractor that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the ESFA considers that the circumstances constitute an emergency despite the Prime Contractor not being in breach of its obligations under this Contract; (d) the ESFA being advised by a regulatory body that the exercise by the ESFA of its rights under Clause 28 (<i>Step-In Rights</i>) is necessary; (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or (f) a need by the ESFA to take action to discharge a statutory duty;
“Step-Out Date”	has the meaning given in Clause 28.4.2 (<i>Step-In Rights</i>);
“Step-Out Notice”	has the meaning given in Clause 28.4 (<i>Step-In Rights</i>);
“Step-Out Plan”	has the meaning given in Clause 28.5 (<i>Step-In Rights</i>);
“Target Customer Volume”	Means the target number of Customers which the Prime Contractor is required to engage with, as evidenced by their inclusion on the Prime Contractor’s CRM system as notified by the Prime Contractor to the ESFA from time to time, as such target customer volumes are set out in Schedule 6.
“Termination Date”	means any date on which this Contract terminates in accordance with Clause 26.
“Termination Notice”	means a notice to terminate this Contract which may be served by either Party on the other in accordance with the provisions of Clause 26.
“Transferring Former Prime Contractor Employees”	has the meaning given in Schedule 2 (<i>Staff Transfer</i>).

“Work”	means all materials (in whatever format) created by or on behalf of the Prime Contractor as a result of the provision of the Services in the Area including without limitation the Confidential Information and any information relating to the state of the labour market in the Area or in any other location.
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.

2. Commencement, and Duration

- 2.1. The Contract shall commence on the Commencement Date and (subject to earlier termination in accordance with these Terms and Conditions), shall expire on the Expiry Date.
- 2.2. The ESFA shall have the option, by giving written notice to the Prime Contractor, to extend the Contract on up to two occasions for up to two further periods of twelve months each, up to a maximum of two years from 30 September 2021 (subject to the Prime Contractor’s performance and continuing availability of funding). If the ESFA exercises this option, the Prime Contractor shall continue to provide the Services during the relevant extension period on the terms of the Contract.
- 2.3. If the Contract Period is extended in accordance with Clause 2.2, the definition of Expiry Date shall be updated accordingly.

3. Contract Management

- 3.1. The ESFA and the Prime Contractor will each nominate a contact for the purpose of dealing with queries and issues under this Contract and advise the other of the contact details.
- 3.2. The Prime Contractor must ensure appropriate members of staff register as users on the user role management system at <https://logon.fasst.org.uk> to enable the Prime Contractor to digitally sign and agree the Contract online. It is the Prime Contractor’s responsibility to maintain appropriate user roles on an on-going basis.

4. Delivery of the Implementation Services and the Services in the Area

- 4.1. With effect from the Commencement Date and for the duration of the Implementation Period, the Prime Contractor shall supply the Implementation Services in the Area in accordance with the Contract. In supplying the Implementation Services the Prime Contractor shall in particular comply with the provisions of Schedule 2 (Staff Transfers).

- 4.2. The Prime Contractor will provide the Services from the Services Start Date for the duration of the Contract Period in accordance with the Contract.
- 4.3. The Prime Contractor must provide evidence that it has worked in partnership with the LEP to ensure that the delivery of the Services takes account of the LEP's local economic and skills priorities.
- 4.4. The ESFA reserves the right to require the owners of any Prime Contractor to enter into a guarantee of the performance and payment obligations of the Prime Contractor, which guarantee shall be substantially in the form set out in Schedule 9.

5. Assignment, Sub-Contracting and Change of Control

- 5.1. Where the Prime Contractor intends to sub-contract any duties or obligations arising out of this Contract, the Prime Contractor must seek the prior written approval of the ESFA.
- 5.2. Where the ESFA has given such consent and the Prime Contractor subcontracts the supply of part of the Services under the Contract, the Prime Contractor shall provide the ESFA with details of all Sub-Contractors bi annually on 01 October and 31 March in each year by fully and accurately completing the Declaration of Sub-Contractors form in the format set out in Schedule 5. If the Prime Contractor is not sub-contracting any element of the Services then a nil return must be received by the dates specified above. The Prime Contractor must notify the ESFA of any within- year changes to its Sub-Contractors that take place between the submission dates of the Declaration of Sub-Contractors forms, including any changes to the role in delivering the Services of any Sub-Contractor or any changes to the percentage of the contractual obligations assigned to the Sub-Contractor. The ESFA reserves the right to require the Prime Contractor:
 - 5.2.1. not to change the role in delivering the Services of any Sub-Contractor;
 - 5.2.2. not to change the percentage of the contractual obligations assigned to any Sub-Contractor;
 - 5.2.3. not to enter into any Sub-Contract to deliver the Services under this Contract; and/or
 - 5.2.4. to terminate any Sub-Contract to deliver the Services under this Contract.
- 5.3. The Prime Contractor must comply with the requirements on sub-contracting delivery of the Services set out in the Contract. Sub-contracting any part of the Contract shall not relieve the Prime Contractor of any obligation or duty attributable to him under the Contract. The Prime Contractor is responsible for all the actions and omissions of its Sub-Contractors connected to or arising out of the delivery of the Services which it sub-contracts as if they were its own.
- 5.4. Where the Prime Contractor has sub-contracted any duties or obligations

arising out of this Contract, the Prime Contractor shall ensure that there is in place a legally binding Sub-Contract which incorporates all the terms of the Contract and shall send copies of the Sub-Contract to the ESFA if requested in writing to do so. Where the Prime Contractor enters into a Sub-Contract for the purpose of performing the Contract, the Prime Contractor shall ensure that the Sub-Contract includes any additional terms applicable to the Sub-Contractor specified in the Contract.

- 5.5. The Prime Contractor shall ensure that Sub-Contractors are selected fairly following an open and competitive tendering process and have sufficient capacity, capability, quality and financial standing to deliver the Services.
- 5.6. The Prime Contractor shall ensure that any Sub-Contract entered into for the purpose of delivering the Services under this Contract contains a term providing that the ESFA has the right to enforce the terms of the Sub-Contract. For the avoidance of doubt, the ESFA will be a third party within the meaning of the Contracts (Third Party Rights) Act 1999 in respect of any Sub-Contract.
- 5.7. The Prime Contractor shall make payment to any Sub-Contractor within 30 days of receiving a valid claim for payment and ensure that any Sub-Contract entered into for the purpose of delivering the Services under this Contract contains a term giving effect to this requirement.
- 5.8. The Services under this Contract may only be sub-contracted to one level unless the Prime Contractor obtains the prior written consent of ESFA. Where the ESFA consents to the sub-contracting of any part of the Services by the Sub-Contractor, the provisions of Clauses 5.2 to 5.7 shall apply in respect of any such sub-contract.
- 5.9. The Prime Contractor may not assign any rights, duties or obligations under this Contract without the prior written consent of the ESFA.
- 5.10. The Prime Contractor must notify the ESFA in writing if there is a change in its name at least one month prior to the change taking effect.
- 5.11. The Prime Contractor must notify the ESFA in writing if there is a change of Control of the Prime Contractor at least 12 weeks prior to the change taking effect. The ESFA shall have the right to terminate this Contract on a Change of Control of the Prime Contractor in accordance with Clause 26 (Termination).
- 5.12. The Prime Contractor shall not without the prior written consent of the ESFA assign, novate or otherwise dispose of or deal in any other manner with (including by means of a change of Control of the Prime Contractor) any or all of its rights, obligations or liabilities under this Contract. The Prime Contractor shall give the ESFA at least 12 weeks' notice of any such plans. The ESFA reserves the right to refuse consent under this Clause at its absolute discretion, in particular (but not limited to) if it considers that any, or any proposed, assignment, novation, disposal or other dealing, including any change of Control of the Prime Contractor, may or would:

- i. put public funds at risk; or
- ii. put at risk the delivery of the Services to Customers.

5.13. The ESFA further reserves the right to make it a condition precedent of any consent under Clause 5.12 that any proposed new owner of the Prime Contractor shall enter into a guarantee of performance and payment obligations in accordance with Clause 4.4.

5.14. The Prime Contractor shall give to the ESFA if so requested a list of all parties who are or may be at any time directly concerned with the performance of the Contract specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the ESFA may reasonably require.

6. Freedom of Information and Confidentiality

6.1. Freedom of Information

6.1.1. The Prime Contractor acknowledges and agrees that the ESFA is subject to legal duties under FOIA, which may require the ESFA to disclose on request information relating to this Contract or otherwise relating to the Prime Contractor.

6.1.2. The Prime Contractor acknowledges and agrees that the ESFA is required by Law to consider each and every request made under FOIA for information.

6.1.3. The Prime Contractor acknowledges and agrees that all decisions made by the ESFA pursuant to a request under FOIA are solely a matter for and at the discretion of the ESFA.

6.1.4. Notwithstanding anything in this Contract to the contrary (including without limitation any obligations of confidentiality), the ESFA shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the ESFA shall use reasonable endeavours (but shall not be obliged) to consult the Prime Contractor and shall not:

- a) confirm or deny that information is held by the ESFA; or
- b) disclose information requested

to the extent that in the ESFA's opinion the information is eligible in the circumstances for an exemption and therefore the ESFA may lawfully refrain from doing either of the things described in parts (a) and (b) of this Clause.

6.1.5. In relation to information relating to the Prime Contractor or the Contract which the Prime Contractor requests should be exempt

under the FOIA, the Prime Contractor shall indemnify the ESFA for any and all costs (including legal fees) incurred by the ESFA in:

- a) assessing the application of any exemption under FOIA; and/or
- b) responding to any FOIA notice; and/or
- c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure

where such costs are incurred pursuant to efforts by the ESFA to withhold Exempt Information.

6.1.6. The ESFA shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the disclosure under FOIA of any Exempt Information or other information whether relating to this Contract or otherwise relating to the Prime Contractor.

6.1.7. The Prime Contractor shall assist the ESFA as reasonably necessary to enable the ESFA to comply with its obligations under FOIA.

6.2. Confidentiality

6.2.1. In this Clause 6.2 the “**Disclosing Party**” means a Party that directly or indirectly discloses or makes available Confidential Information and the “**Receiving Party**” means the Party which directly or indirectly receives or obtains Confidential Information.

6.2.2. In consideration of the Disclosing Party providing Confidential Information, at its discretion, to the Receiving Party, the Receiving Party shall and shall ensure that any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall:

- a) treat all Confidential Information as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Contract; and
- b) not disclose any Confidential Information to any third party without prior written consent of the Disclosing Party, except where disclosure is otherwise expressly permitted by the provisions of this Contract.

6.2.3. Nothing in this Clause 6 shall be deemed or construed to prevent the ESFA from disclosing any Confidential Information obtained from the Prime Contractor:

- a) to any other Central Government Body, Non-

Departmental or Quasi Government Body or agency, central or local;

- b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- c) to any professional adviser, consultant, Prime Contractor or other person engaged by the ESFA directly in connection with this Contract, provided that such information is treated as confidential by the receiving consultant, Prime Contractor or any other person;
- d) on a confidential basis to any proposed successor body in connection with any assignment, disposal of its rights, obligations or liabilities under this Contract.

- 6.2.4. The Receiving Party undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice in order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the course of the Services.
- 6.2.5. The Receiving Party will immediately notify the Disclosing Party of any breach of security in relation to Confidential Information and all data obtained in the course of the relevant breach or breaches and will keep a record of such breach(es). The Receiving Party will use its best endeavours to recover such Confidential Information or data however it may be recorded.
- 6.2.6. The Prime Contractor will co-operate with the ESFA in any investigation that the ESFA considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 6.2.7. The Prime Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the ESFA's request if the ESFA reasonably believes the Prime Contractor has failed to comply with Clause 6.2.4.
- 6.2.8. The ESFA reserves the right to publish details of this Contract and the payments made under it to comply with the Government's transparency requirements.
- 6.2.9. The provisions of this Clause 6 will apply for the duration of the Contract or after its termination until the Confidential Information ceases to be confidential, whichever is the later.
- 6.2.10. The Prime Contractor's failure to comply with the provisions of this Clause 6 shall constitute a Serious Breach under Clause 25 of the

Contract.

7. Intellectual Property Rights and phone numbers

- 7.1 The Prime Contractor hereby grants to the ESFA (and, where relevant, shall procure from any necessary third parties the grant to the ESFA of) a non-exclusive, irrevocable, perpetual, worldwide, royalty-free licence (with the right to sub-license to third parties including to any replacement Prime Contractor) of any and all Intellectual Property contained within the Work or which is required for the enjoyment and use of the Services and the Implementation Services.
- 7.2 The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising.
- 7.3 The Prime Contractor shall on request by the ESFA at any time and subject only to the consent of the relevant telecommunications provider(s) take all necessary steps to effect the transfer to the ESFA of any telephone numbers associated with the Services and/or the National Careers Service. The Prime Contractor shall, in addition, co-operate fully with the ESFA with respect to such transfer where requested and shall not in any way obstruct any request made by the ESFA to the relevant telecommunications service provider(s).

8. Marketing, branding, logos and public relations

- 8.1. The Prime Contractor shall comply with guidelines of the endorsement identity, issued by the Education and Skills Funding Agency on all and any promotional materials or activities in relation to the Services. This shall include but not be limited to direct mail advertising, TV and radio advertising, merchandising or any other literature or products.
- 8.2. The Prime Contractor shall be given access to any logos and statements and / or trademarks, which it is required to use. The Prime Contractor will be required to use such logos and statements and trademarks in accordance with the relevant terms of use (as made available to it) and should not alter or amend such logos or statements or trademarks. Logos and statements and trademarks are only to be used in relation to the Services or Implementation Services under this Contract. Any breach of this Clause 8 or the requirements or terms of use of which the Prime Contractor is made aware shall constitute a Serious Breach under Clause 25 of the Contract.
- 8.3. The Prime Contractor may also be required to use logos from other co-branding or co-funding participants and must comply with any terms which apply to the use of such logos.
- 8.4. The Prime Contractor must ensure that the terms of this Clause 8 are contained in any Sub-Contract of the Services or Implementation Services.
- 8.5. The Prime Contractor must support national marketing and branding activities,

to raise awareness of the brand and service and ensure consistent key messages are delivered.

- 8.6. The Prime Contractor is required to promote and advertise the National Careers Service digital service and the National Careers Helpline national number.
- 8.7. The Prime Contractor should direct Customers to the appropriate National Careers Service resources and services and promote messages about the impact and benefits of career management on success in work and life.
- 8.8. The Prime Contractor must produce an annual marketing strategy for the Services, reflective of local needs.
- 8.9. As part of the local strategy, The Prime Contractor can design and produce local materials which must adhere to the National Careers Service brand guidelines.
- 8.10. The Prime Contractor must nominate a marketing and communications lead who will act as a direct contact for the National Careers Service marketing and communications team. The marketing and communications lead will attend occasional regular meetings and contribute to joint working activities including promoting the National Careers Service brand such as and supporting national campaigns.
- 8.11. The Prime Contractor and Sub-Contractors must act as ambassadors and advocates for the Services, particularly in relation to their local partnership activity, encouraging staff and Customers to recommend the National Careers Service to others.
- 8.12. The Prime Contractor and Sub-Contractors must promote the Services in line with the National Careers Service brand guidelines and any other related brand values and guidelines.
- 8.13. All marketing and promotional materials must comply with the brand guidelines and must be approved by the ESFA marketing and communications team. The Prime Contractor should submit any draft materials and any branding-related queries by email to NationalCareers.RETURNS@education.gov.uk.
- 8.14. All marketing and promotional materials must include the National Careers Service website address and national number. Marketing and promotional materials must not include a local website address or telephone numbers.
- 8.15. The Prime Contractor and Sub-Contractors must promote the National Careers Service brand and must ensure that high-profile National Careers Service branding is deployed at every delivery location.
- 8.16. The Prime Contractor and Sub-Contractors must immediately remove or amend any promotional, marketing or communication material that the ESFA deems to be detrimental to the National Careers Service (or ESFA) brand or reputation.

The Prime Contractor must report any instances of brand misuse by third parties by email to NationalCareers.RETURNS@education.gov.uk.

- 8.17. The Prime Contractor must support local, regional and national events, campaigns and marketing activity.
- 8.18. The Prime Contractor must be proactive in engaging with major local and regional events that provide opportunities to reach Customers, employers, schools and stakeholders.
- 8.19. The Prime Contractor must support and engage with specific marketing and PR campaigns as directed by the ESFA in the delivery of national messages.
- 8.20. The Prime Contractor must support campaign activity and ensure they have additional resource available to support anticipated increases in demand as notified by the ESFA.
- 8.21. The Prime Contractor must support the evaluation of campaigns and other national marketing and PR activity (including the evaluation and response data) as requested by the ESFA.
- 8.22. The Prime Contractor must ensure they have staff who are willing to undergo media training and participate in media activity, including radio and press interviews.
- 8.23. The Prime Contractor must also support media activity by providing written material such as CV and interview tips and quotes for regional media outlets, as requested by the ESFA.
- 8.24. The Prime Contractor must actively pursue a local PR and media strategy and ensure that local PR and media activity supports national activity.
- 8.25. The Prime Contractor and Sub-Contractors must always refer to themselves as the National Careers Service when engaging in local PR and media activity.
- 8.26. The Prime Contractor must produce and submit a minimum of two high-quality case studies each month using the ESFA PR template and send on the ninth working day to NationalCareers.RETURNS@education.gov.uk. The case studies must include examples of good practice and demonstrate the impact of the activity and provide a clear outcome.
- 8.27. The Prime Contractor must also support ad hoc requests for case studies in relation to specific PR or media campaigns.

9. Equality of Opportunity

- 9.1. The Prime Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination

in employment or the provision of services. The Prime Contractor shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Prime Contractor and all sub-contractors employed in the execution of the Contract. The Prime Contractor will comply with the detailed requirements in relation to equality of opportunity set out in Clauses 9.2 to 9.4.

- 9.2. The Prime Contractor will, in delivering the Services under this Contract, demonstrate that it has had regard to the duties placed on the ESFA and the Prime Contractor by the Equality Act 2010. The Prime Contractor will take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Prime Contractor and all Sub-Contractors employed to deliver the Services.
- 9.3. The Prime Contractor shall ensure that equality of opportunity is built into all aspects of Services; the business planning process; and the self-assessment process. The Prime Contractor shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The Prime Contractor shall use appropriate, specific and measurable objectives. These will be proportionate, relevant and aligned to the Services the Prime Contractor is funded to deliver.
- 9.4. The ESFA may use a variety of equality information and data to support judgements about quality and eligibility for funding. These may include, but are not limited to: inspection judgements for equality and diversity, judgements from the Equality and Human Rights Commission, and the success and participation rates of different groups of Customers.

10. Customer Health, Safety & Welfare

- 10.1. The Prime Contractor shall ensure so far as reasonably practicable that the Services are delivered in safe, healthy and supportive environments, which meet the needs of Customers. The Prime Contractor shall provide information to the ESFA, as and when specifically requested, to give assurance that adequate arrangements exist for Customer Health, Safety and Welfare.
- 10.2. Where part of the Services take place in an environment outside the direct control of the Prime Contractor, the Prime Contractor shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of the Customers.
- 10.3. The Prime Contractor must carry out appropriate disclosure and barring service checks on all applicants for employment where such applicants would be employed to work in regulated activity relating to vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) if successful, and must seek additional information about an applicant's conduct.
- 10.4. In working with other organisations/bodies, the Prime Contractor shall make

arrangements to co-ordinate and co-operate effectively for reasons of Customer health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.

- 10.5. In providing the Services, the Prime Contractor must ensure it actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs, and promote principles that support equality of opportunity for all.
- 10.6. In providing the Services, the Prime Contractor must comply with the general duty on specified authorities in section 26 of the Counter-Terrorism and Security Act 2015 (the Prevent duty) and must have regard to statutory guidance issued under section 29 of the Counter-Terrorism and Security Act 2015. Failure to do so may constitute a Serious Breach of this Contract.
- 10.7. In providing the Provision, the Prime Contractor must comply with the duty on partners of a panel in section 38 of the Counter-Terrorism and Security Act 2015 (Channel co-operation duty). Failure to do so may constitute a Serious Breach of this Contract.
- 10.8. The Prime Contractor shall, in circumstances where it sub-contracts the management and/or delivery of the Services under this Contract, ensure that all the provisions in respect of Customer Health, Safety and Welfare in this Clause 10 are included in its Sub-Contract with Sub-Contractors.
- 10.9. The Prime Contractor shall report all RIDDOR reportable incidents in line with the Regulations, and shall investigate or assess the circumstances of all Customer incidents within the scope of RIDDOR and follow HSE guidance 'Investigating accidents and incidents: A workbook for employers, unions, safety representatives and safety professionals' (HSG245) ISBN 0717628272. The Prime Contractor shall only use persons competent to investigate/assess Customer incidents with a view to identifying the causes of any incident and lessons to be learned.
- 10.10. The Prime Contractor shall also monitor, and act on, any other harm to Customers to the extent that the Prime Contractor could reasonably be expected to do so and/or where the harm could affect the quality of the experience. Harm includes (but is not limited to) incidents that cause any loss to the Customer of any physical or mental faculty or any disfigurement and incidents of bullying and harassment.
- 10.11. The Prime Contractor shall co-operate with the ESFA and Department for Work and Pensions for the purposes of the Industrial Injuries Disablement Benefit (IIDB) in respect to those Customers to which it applies.
- 10.12. The Prime Contractor and/or the Prime Contractor Related Parties must be able to demonstrate that they have robust record-keeping procedures in respect of health, safety and safeguarding through checks on record keeping undertaken.

Failure to do so will constitute a Serious Breach.

10.13. Where the Prime Contractor or one of its subcontractors refer:

10.13.1 a safeguarding concern related to sexual violence to Local Authority children's social care/adult social care and/or the police, or

10.13.2 an allegation of abuse made against a teacher or other member of staff to the designated officer(s) (at the local authority),

the Prime Contractor must, as soon as practicable, inform the ESFA via email to Enquiries.EFA@education.gov.uk. Such notification must include the name of the Prime Contractor, a high level summary of the nature of the incident (without sharing personal information about victims or alleged perpetrators) and confirmation of whether it is, or is scheduled to be, investigated by the Local Authority and/or the police.

10.14. Where the Prime Contractor makes a referral of an individual for the purposes of determining whether that individual should be referred to a panel for the carrying out of an assessment under section 36 of the Counter-Terrorism and Security Act 2015 of the extent to which that individual is vulnerable to being drawn into terrorism, the Prime Contractor shall ensure it notifies the ESFA that a referral has been made.

10.15. Where the Prime Contractor has made a referral or provided information to the Disclosure and Barring Service in compliance with any duties of the Body under the Safeguarding Vulnerable Groups Act 2006, the Prime Contractor shall ensure that it informs the ESFA that a referral has been made / information has been provided.

11. Liability

11.1. Neither Party limits its liability:

11.1.1. for death or personal injury cause by the negligence of itself or of any of its servants, employees to agents acting in the course of their employment; or

11.1.2. in respect of fraud, fraudulent misrepresentation or fraudulent concealment; or

11.1.3. in respect of the indemnities in Clause 19 (Employment Indemnity), Schedule 2 (*Staff Transfer*) and the Pensions Annex to Schedule 2 (*Staff Transfer*).

11.2. Subject to clause 11.5, the Prime Contractor shall indemnify in full on demand and keep indemnified in full on demand the ESFA, their servants, employees, and agents against:

11.2.1. all Losses, costs and expenses (including legal expenses); and

11.2.2. all claims, damages and liabilities,

suffered or incurred by the ESFA, their servants, employees, or agents in respect of any loss or damage or personal injury (including death) which arises out of or in the course of or is caused by the negligent act or omission or willful default of the Prime Contractor, their servants or agents in the delivery of the Services.

11.3. The Prime Contractor warrants to the ESFA that to the best of its knowledge and belief, all Services provided under the Contract will not infringe, in whole or in part, any copyright or any other Intellectual Property right of any person and agrees to indemnify the ESFA in full on demand and to keep the ESFA fully indemnified on demand from and against any and all:

11.3.1. Losses, costs, damages and expenses (including legal expenses); and

11.3.2. All claims, demands, and proceedings,

including (in each case) any of a consequential nature, arising directly or indirectly out of any claim that the results of the Services in any way infringe the Intellectual Property right(s) of any third party. This warranty and indemnity shall survive the termination of the Contract and shall exist for the life of the copyright or other Intellectual Property right.

11.4. The Prime Contractor shall indemnify the ESFA on demand, and shall keep the ESFA fully indemnified on demand from and against all claims made against the ESFA by any third party as a result of the acts or omission of the Prime Contractor in the course of the supply of the Services.

11.5. Subject to Clause 11.1, the maximum aggregate liability of each Party to the other Party in any Contract Year for all claims (whether made in contract, tort, under statute or otherwise (including in each case negligence)) arising under or in connection with this Contract during that Contract Year shall not exceed the total amount paid or payable by ESFA to the Prime Contractor pursuant to this Contract during the Contract Year in which the event or series of events giving rise to the claim occurred.

11.6. The ESFA reserves the right to require the Prime Contractor to secure the provision of an appropriate guarantee in respect of the Prime Contractor's liabilities under this Contract.

11.7. The ESFA's maximum aggregate liability to make payment to the ESFA in respect of the Services during any Contract Year shall be limited to the Maximum Contract Value.

12. Insurance

- 12.1. The Prime Contractor shall maintain at its own cost a policy or policies of insurance to cover the liability of the Prime Contractor in respect of any act or default for which it may become liable to indemnify the ESFA under this Contract and for any claims made against it by any third party or Customer in respect of the supply of the Services.
- 12.2. The ESFA reserves the right to require the Prime Contractor to insure against any act or default which arises as a result of fraud or other criminal activity by the Prime Contractor, its employees, agents or Sub-Contractors.
- 12.3. The Prime Contractor shall take out and maintain the following insurances:
 - 12.3.1. Employers liability insurance as required by Law;
 - 12.3.2. Public liability insurance for a sum of not less than GBP 5 million per event or series of events arising from the one occurrence;
 - 12.3.3. Professional indemnity insurance for a sum not less than GBP 1 million per event or series of events arising from the one occurrence.
- 12.4. The Prime Contractor should provide copies of any insurance certificates to the ESFA following a written request from the ESFA.

13. Access and Monitoring

- 13.1. When appropriate the ESFA shall give the Prime Contractor reasonable advance notice in writing of proposed visits to the Prime Contractor or its Sub-Contractors, to observe the delivery of the Services, by any person who has taken or will take no direct part in the conduct or content of the Services.
- 13.2. For monitoring and evaluation purposes, the ESFA or their representatives, the Secretary of State or their representatives, the National Audit Office, the Inspectorates and HM Treasury shall have the right to visit all or any site(s) and view operations relating to the provision and to inspect relevant documents and interview Customers and the Prime Contractor's staff during these visits in order to:
 - 13.2.1. examine, audit or take copies of any original or copy documentation, accounts, books and records of the Prime Contractor and its Sub-Contractors that relate to the Contract;
 - 13.2.2. visit, view or assess the design, management and delivery relating to the Contract at any Premises where those operations are carried out (including those of sub-contractors) and conduct relevant interviews, including interviews with Customers, during these visits at any reasonable time;
 - 13.2.3. carry out examinations into the economy, efficiency and effectiveness

with which the Prime Contractor has used the ESFA's resources in the performance of the Contract.

- 13.3. The Prime Contractor shall, if required by any of the representatives stated at Clause 13.2 provide appropriate oral or written explanations.
- 13.4. The ESFA reserves the right, at any reasonable time, and as it may deem necessary to require the Prime Contractor at its own cost to:
 - 13.4.1. provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform the Contract;
 - 13.4.2. provide such assurance as the ESFA may require that the delivery of the Services complies with the requirements of the Contract;
 - 13.4.3. obtain a report by an independent accountant of the ESFA's choice on:
 - a) the financial systems and controls operated by the Prime Contractor or its subcontractors,
 - b) the accuracy and regularity of funding claims in respect of payments claimed or received under the Contract, or
 - c) the evidence held by the Prime Contractor or its Sub-Contractors to support delivery of the Services in accordance with the terms of the Contract.

The Prime Contractor must agree the instructions for any report to be obtained under clause 13.4.3 with the ESFA and this may include the ESFA discussing the terms of reference directly with the independent accountant where necessary. The report and the work required in order to produce the report shall be carried out to the satisfaction of the ESFA, and the ESFA must be able to place reliance on it. The Prime Contractor shall provide a copy of any draft report at all stages of reporting and the final report to the ESFA as soon as they are available. The ESFA reserves the right to require the Prime Contractor to publish the final report;

- 13.4.4. provide a copy of the Prime Contractor's latest audited Accounts and submit further copies of the audited Accounts as they become available;
- 13.4.5. submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the ESFA; or
- 13.4.6. provide any additional evidence to support payments made under this Contract, as the ESFA shall reasonably require.

- 13.5. The Prime Contractor shall in performing the Services comply fully with all relevant rules and regulations of the ESFA in force.
- 13.6. Where the ESFA has undertaken an investigation or received a report from an independent accountant or otherwise, in relation to the Prime Contractor, it may, as a consequence of that investigation or report, impose additional Contract obligations upon the Prime Contractor.
- 13.7. The Prime Contractor must comply with any additional Contract obligations imposed under clause 13.6.
- 13.8. If the ESFA assesses that the Prime Contractor has failed to comply with any additional Contract obligations imposed under clause 13.6 within such time as the ESFA deems reasonable, the ESFA may take such actions as it deems appropriate which may include, but is not limited to, under Clause 25.4 Minor Breach or Clause 25.5-25.6 Serious Breach.
- 13.9. In addition to the other requirements to provide information set out in this Contract the ESFA reserves the right to request information from the Prime Contractor in order to exercise its responsibilities and/or to fulfill requirements to provide information to the Secretary of State, to account to Parliament and to meet European funding requirements for so long as these apply. On occasion, the ESFA will require urgent information from the Prime Contractor.
- 13.10. The Prime Contractor shall provide the ESFA or agents acting on its behalf with the information it requires under Clauses 13.4 and 13.9 at the times and in the formats specified. This information shall be of sufficient quality to meet the purposes for which it has been requested.

14. Funding and Payment

- 14.1. In consideration of the supply of the Services by the Prime Contractor in accordance with this Contract, the ESFA agrees to pay the Prime Contractor the amounts set out in the Funding Rules, in the manner set out in the Funding Rules, but subject to the terms of this Clause 14.
- 14.2. The ESFA reserves the right to withhold or suspend payment of any sum due under the Funding Rules:
 - 14.2.1. Where the Prime Contractor fails to meet the evidence requirements for the relevant Outcome set out in the Funding Rules;
 - 14.2.2. Where the Prime Contractor is assessed by the ESFA as being at serious risk of failure to deliver the Services following any review of the quality of the Services in accordance with Clause 22.5;
 - 14.2.3. Where all or part of the Customer Data provided by the Prime Contractor to the ESFA in accordance with the Funding Rules is of a quality which leads the ESFA to be concerned about the accuracy of

the Customer Data provided by the Prime Contractor as a whole; or

14.2.4. In any other circumstance provided for by the Contract.

14.3. The Prime Contractor shall comply with the Funding Rules published by the ESFA as amended from time to time in accordance with the Contract. The ESFA may change the Funding Rules in the manner specified therein. Additionally:

14.3.1. the ESFA shall be entitled to reduce the Maximum Contract Value at any time on giving three months' notice to the Prime Contractor where changes to government funding or policy require this, and for the avoidance of doubt, if funding is withdrawn for the Area Based Service, such that the Maximum Contract Value is reduced to zero, the ESFA shall give notice pursuant to this Clause and shall be entitled to terminate the Contract pursuant to Clause 26.1.1; and / or

14.3.2. If the ESFA wishes to make any additional changes to the Funding Rules which are not specified in the Funding Rules, the ESFA may do so, provided that the ESFA agrees to be responsible for meeting any reasonable incremental costs incurred by the Prime Contractor as a result of such changes.

14.4. Payment by the ESFA of sums invoiced by the Prime Contractor under the Contract shall be without prejudice to any claims or rights, which the ESFA may have against the Prime Contractor and shall not constitute any acceptance by the ESFA as to the performance by the Prime Contractor of its obligations hereunder. Prior to any such payment, the ESFA shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the Prime Contractor, arising from this Contract or any other Contract between the Prime Contractor and the ESFA relating to the National Careers Service.

14.5. Where the ESFA carries out a review, investigation or audit of a sample of the evidence which the Prime Contractor is required to provide under the Funding Rules to support the payment claims issued to the ESFA and the ESFA identifies errors in that evidence which it (acting reasonably) deems are material, the ESFA reserves the right at its absolute discretion to require the Prime Contractor to carry out a fuller audit of all or part of the payment claims made in respect of the Services and/or to recover from the Prime Contractor an amount based on the error rate identified and then applied to the total value of the Contract for the relevant Contract Year. Such amounts may be recovered by making adjustments to payment claims submitted by the Prime Contractor under the Contract, or by raising an invoice for payment by the Prime Contractor, or making deductions from future payments due to the Prime Contractor under the Contract. Failure to settle such amounts by the Prime Contractor will constitute a Serious Breach under Clause 25 of the Contract.

14.6. The Prime Contractor shall submit requests for payment, together with the

relevant supporting information required by the Funding Rules monthly in arrears. All payments by the ESFA will be made via BACS within 30 days of receipt of the relevant payment claim.

- 14.7. Where (as envisaged in the ITT), the ESFA requests that the Prime Contractor carries out a pilot or a standalone project (for example in response to a local event in the Area), the Prime Contractor shall be required to issue separate invoices to the ESFA for such pilot or project.
- 14.8. The ESFA is generally unable to recover any Value Added Tax charged. The sums payable under this Contract, as set out in the Funding Rules, include the cost of the Services and any other VAT or taxes to be charged, where they apply.

15. Review of sums invoiced and reconciliation against Maximum Contract Value

- 15.1. A review will take place on the 8th day of each month in respect of payment claims issued by the Supplier in respect of the Services. The ESFA will compare the payment claims issued by the Prime Contractor against the Maximum Contract Value and against the Customer Satisfaction Outcome Cap as specified in the Funding Rules, and / or any other caps on spending which may be included in the Funding Rules from time to time. At this stage a reconciliation will take place. Any overpayment made to the Prime Contractor by the ESFA will be repayable by the Prime Contractor within 30 days of receiving a request from the ESFA. The ESFA reserves the right to reduce future payments to recover any overpayments.
- 15.2. The evidence required in respect of each element of the Services is set out in the Funding Rules and the Prime Contractor must retain such evidence for inspection on demand in accordance with the provisions of the Funding Rules.

16. Prohibited Activities

- 16.1. The Prime Contractor shall not offer or give, or agree to give, to any member, employee or representative of the ESFA any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with the ESFA or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The Prime Contractor's attention is drawn to the criminal offences created by the Bribery Act 2010. Any offence by the Prime Contractor or its employees or by anyone acting on its behalf under the Bribery Act 2010 in relation to this or any Contract with the ESFA or Her Majesty's Government shall entitle the ESFA to terminate the Contract and recover from the Prime Contractor the amount of any loss resulting from such termination and/or to recover from the Prime Contractor the amount of value of any gift, consideration or commission.

- 16.2. The Prime Contractor shall not enter into any Sub-Contract with any political or religious organisation using any funding provided by the ESFA under this Contract if the effect of that Sub-Contract would be to promote a particular political or religious point of view.
- 16.3. The Prime Contractor shall not hold itself out as acting on behalf of the ESFA without the ESFA's permission.

17. Data Protection and Protection of Personal Data

- 17.1. In this Clause 17, the following words and expressions shall be defined as follows:

- 17.1.1. **Law:** means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Prime Contractor is bound to comply;
- 17.1.2. **Prime Contractor Personnel:** means all directors, officers, employees, agents, consultants and contractors of the Prime Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;
- 17.1.3. **Data Protection Legislation:** (i) the GDPR, the Law Enforcement Directive (LED) and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
- 17.1.4. **Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
- 17.1.5. **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** take the meaning given in the GDPR;
- 17.1.6. **Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Prime Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
- 17.1.7. **Data Subject Access 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;
- 17.1.8. **DPA 2018:** Data Protection Act 2018;
- 17.1.9. **GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679);
- 17.1.10. **LED:** Law Enforcement Directive (Directive (EU) 2016/680);
- 17.1.11. **Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and

resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it; and

- 17.1.12. **Sub-processor:** any third Party appointed to process Personal Data on behalf of the Prime Contractor related to this Contract
- 17.2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Secretary of State for Education on behalf of the ESFA is the Controller and the Prime Contractor is the Processor. The only processing that the Prime Contractor is authorised to do is listed in Schedule 8 by the ESFA and may not be determined by the Prime Contractor.
- 17.3. The Prime Contractor shall notify the ESFA immediately if it considers that any of the ESFA's instructions infringe the Data Protection Legislation.
- 17.4. The Prime Contractor shall provide all reasonable assistance to the ESFA in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the ESFA, include:
 - 17.4.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 17.4.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 17.4.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 17.4.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.5. The Prime Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
 - 17.5.1. process that Personal Data only in accordance with Schedule 8, unless the Prime Contractor is required to do otherwise by Law. If it is so required the Prime Contractor shall promptly notify the ESFA before processing the Personal Data unless prohibited by Law;
 - 17.5.2. ensure that it has in place Protective Measures, which have been reviewed and approved by the ESFA as appropriate to protect against a Data Loss Event having taken account of the:
 - a) nature of the data to be protected,
 - b) harm that might result from a Data Loss Event,
 - c) state of technological development, and
 - d) cost of implementing any measures;

17.5.3. ensure that :

- a) the Prime Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 8),
- b) it takes all reasonable steps to ensure the reliability and integrity of any Prime Contractor Personnel who have access to the Personal Data and ensure that they,
 - A. are aware of and comply with the Prime Contractor's duties under this Clause;
 - B. are subject to appropriate confidentiality undertakings with the Prime Contractor or any Sub-processor;
 - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the ESFA or as otherwise permitted by this Contract; and
 - D. have undergone adequate training in the use, care, protection and handling of Personal Data; and

17.5.4. not transfer Personal Data outside of the EU unless the prior written consent of the ESFA has been obtained and the following conditions are fulfilled:

- a) the ESFA or the Prime Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the ESFA,
- b) the Data Subject has enforceable rights and effective legal remedies,
- c) the Prime Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the ESFA in meeting its obligations), and
- d) the Prime Contractor complies with any reasonable instructions notified to it in advance by the ESFA with respect to the processing of the Personal Data; and

17.5.5. at the written direction of the ESFA, delete or return Personal Data (and any copies of it) to the ESFA on termination of the Agreement unless the Prime Contractor is required by Law to retain the Personal Data.

17.6. Subject to Clause 17.7, the Prime Contractor shall notify the ESFA immediately if it:

17.6.1. receives a Data Subject Access Request (or purported Data Subject Access Request);

- 17.6.2. receives a request to rectify, block or erase any Personal Data;
 - 17.6.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 17.6.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 17.6.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 17.6.6. becomes aware of a Data Loss Event.
- 17.7. The Prime Contractor's obligation to notify under Clause 17.6 shall include the provision of further information to the ESFA in phases, as details become available.
- 17.8. Taking into account the nature of the processing, the Prime Contractor shall provide the ESFA with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 17.6 (and insofar as possible within the timescales reasonably required by the ESFA) including by promptly providing:
- 17.8.1. the ESFA with full details and copies of the complaint, communication or request;
 - 17.8.2. such assistance as is reasonably requested by the ESFA to enable the ESFA to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 17.8.3. the ESFA, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 17.8.4. assistance as requested by the ESFA following any Data Loss Event;
 - 17.8.5. assistance as requested by the ESFA with respect to any request from the Information Commissioner's Office, or any consultation by the ESFA with the Information Commissioner's Office.
- 17.9. The Prime Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 17. This requirement does not apply where the Prime Contractor employs fewer than 250 staff, unless:
- 17.9.1. the ESFA determines that the processing is not occasional;

- 17.9.2. the ESFA 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
 - 17.9.3. the ESFA determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 17.10. The Prime Contractor shall allow for audits of its Data Processing activity by the ESFA or the ESFA's designated auditor.
- 17.11. The Prime Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 17.12. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Prime Contractor must:
 - 17.12.1. notify the ESFA in writing of the intended Sub-processor and processing;
 - 17.12.2. obtain the written consent of the ESFA;
 - 17.12.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 17 such that they apply to the Sub-processor; and
 - 17.12.4. provide the ESFA with such information regarding the Sub-processor as the ESFA may reasonably require.
- 17.13. The Prime Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 17.14. The ESFA may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 17.15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The ESFA may on not less than 30 Working Days' notice to the Prime Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 17.16. Where the Prime Contractor is providing the Services to Customers claiming out of work benefits, the Secretary of State for Work and Pensions (or their successor) is the Controller in relation to Personal Data which the Prime Contractor is required to provide to the Secretary of State for Work and Pensions.
- 17.17. Insofar as the Prime Contractor processes Personal Data for its own

administrative purposes, whilst undertaking this Contract the Prime Contractor must comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Department of Education or the ESFA to breach any of their applicable obligations under the Data Protection Laws.

17.18. The Prime Contractor's failure to comply with the provisions of this Clause 17 will constitute a Serious Breach under Clause 25 of the Contract.

18. Staff Transfer

18.1. The Parties agree that:

18.1.1. where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 2 (*Staff Transfer*) shall apply as follows:

- a) where the Relevant Transfer involves the transfer of Transferring Former Prime Contractor Employees, Part A of Schedule 2 (*Staff Transfer*) and the Pensions Annex to Schedule 2 (*Staff Transfer*) shall apply; and
- b) Part B of Schedule 2 (*Staff Transfer*) shall not apply;

18.1.2. where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part B of Schedule 2 (*Staff Transfer*) shall apply and the Pensions Annex to Schedule 2 (*Staff Transfer*) shall apply and Part A of Schedule 2 (*Staff Transfer*) shall not apply;

18.1.3. whether neither Parts A or B of Schedule 2 (*Staff Transfer*) apply because the Former Prime Contractor becomes the Prime Contractor, the Pensions Annex to Schedule 2 (*Staff Transfer*) shall apply; and

18.1.4. Part C of Schedule 2 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services as shall the relevant parts of the Pensions Annex to Schedule 2 (*Staff Transfer*).

19. Employment Indemnity

19.1. The Parties agree that:

19.1.1. the Prime Contractor shall both during and after the Contract Period indemnify the ESFA against all Employee Liabilities that may arise as a result of any claims brought against the ESFA by any person where such claim arises from any act or omission of the Prime Contractor or any Prime Contractor Personnel; and

19.1.2. the ESFA shall both during and after the Contract Period indemnify the Prime Contractor against all Employee Liabilities that may arise

as a result of any claims brought against the Prime Contractor by any person where such claim arises from any act or omission of the ESFA or any of the ESFA's employees, agents, consultants and contractors.

20. Security Standards

- 20.1. The Prime Contractor shall comply with the ESFA Security Standards for Contractors which include but are not constrained to the following clauses.
- 20.2. Where the Prime Contractor (in provision of the Services or otherwise) handles information at OFFICIAL security classification on behalf of the ESFA, it must comply with the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) 25 May 2016, or any subsequent updated document, including but not limited to:
 - 20.2.1. the Prime Contractor shall have achieved and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme; and
 - 20.2.2. the certification scope must be relevant to the services supplied to, or on behalf of, the ESFA;
- 20.3. The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 20.4. The Prime Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any ESFA Data being handled in the course of providing the Services, and will handle this data in accordance with its security classification. In the event where the Prime Contractor has an existing protective marking then the Prime Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the ESFA Data.
- 20.5. In conformance with the GSCP, data held by Prime Contractors will by default be classified as 'OFFICIAL' and move to 'OFFICIAL–SENSITIVE' where the number of Customer records stored or processed exceeds 1,000 individual records.
- 20.6. ESFA Data being handled in the course of providing the Services must be segregated from other data on the Prime Contractor's or Sub-Contractor's own IT equipment to both protect the ESFA Data and enable it to be identified and securely deleted when required. In the event that it is not possible to segregate any ESFA Data then the Contractor and any Sub-Contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 20.12.

- 20.7. The Prime Contractor shall have in place and maintain physical security, in line with those outlined in ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access) to premises and sensitive areas.
- 20.8. The Prime Contractor shall have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to ESFA Data.
- 20.9. The Prime Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect ESFA Data, including but not limited to: physical security controls; Good Industry Standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 20.10. Any electronic transfer methods across public space or cyberspace, including third party provider networks must be protected via encryption which has been certified to a minimum of FIPS 140-2 standard or a similar method approved by the ESFA prior to being used for the transfer of any ESFA Data.
- 20.11. Storage of ESFA Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 20.12 and 20.13 below.
- 20.12. Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process ESFA Data to deliver and support the service, shall be under the control and configuration management of the Prime Contractor or (sub-contractors) providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the ESFA.
- 20.13. All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process ESFA Data to deliver and support the Services, shall be under the control and configuration management of the Prime Contractor or Sub-Contractors providing the Services, and shall be necessary to deliver the Services. These devices shall be full-disk encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the ESFA.
- 20.14. Whilst in the Prime Contractor's care all removable media and hardcopy paper documents containing ESFA Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.

- 20.15. When necessary to hand carry removable media and/or hardcopy paper documents containing ESFA Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This Clause shall apply equally regardless of whether the material is being carried inside or outside of the Prime Contractor's premises.
- 20.16. At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Prime Contractor's ICT infrastructure must be Securely Sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Prime Contractor or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- 20.17. Access by Prime Contractor or Sub-Contractor staff to ESFA Data shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the ESFA. All Prime Contractor or Sub-Contractor staff must complete this process before access to ESFA Data is permitted.
- 20.18. All Prime Contractor or Sub-Contractor employees who handle ESFA Data must have annual awareness training in protecting information.
- 20.19. The Prime Contractor shall, as a minimum, have in place robust business continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the Contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the Services delivered. If an ISO 22301 certificate is not available the Prime Contractor will provide evidence of the effectiveness of their ISO 22301 conformant business continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Prime Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 20.20. Any suspected or actual breach of the confidentiality, integrity or availability of ESFA Data being handled in the course of providing this service, or any non-compliance with these Security Standards for Prime Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the ESFA by a method agreed by both parties.
- 20.21. The Prime Contractor shall ensure that any IT systems and hosting

environments that are used to hold ESFA Data being handled, stored or processed in the course of providing the Services shall be subject to an independent IT Health Check (ITHC) at the Prime Contractor's own cost using a National Cyber Security Centre (NCSC) approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC above medium and relevant to the Services are to be shared with the ESFA and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.

- 20.22. The Prime Contractor or Sub-Contractors providing the Services will provide the ESFA with full details of any storage of ESFA Data outside of the UK or any future intention to host ESFA Data outside the UK or to perform any form of ICT management, support or development function from outside the UK. The Prime Contractor or Sub-Contractor will not go ahead with any such proposal without the prior written agreement from the ESFA.
- 20.23. The ESFA reserves the right to audit the Prime Contractor or Sub-Contractors providing the Services within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the Services being supplied and the Prime Contractor's, and any Sub-Contractors, compliance with provisions in this Clause.
- 20.24. The Prime Contractor shall contractually enforce all these Security Standards for Prime Contractors onto any third-party suppliers, Sub-Contractors or partners who could potentially access ESFA Data in the course of providing the Services.
- 20.25. The Prime Contractor and Sub-Contractors shall undergo appropriate security assurance activities as determined by the ESFA. Prime Contractor and Sub-Contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation such as completing the DfE Security Assurance Model (DSAM) process or the Business Service Assurance Model (BSAM). This will include obtaining any necessary professional security resources required to support the Prime Contractor's and Sub-Contractor's security assurance activities such as: a NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA).
- 20.26. Prior to the start of the Contract, the Prime Contractor shall undergo a Security Readiness Review to ascertain its compliance with the Security Standards and to gauge their security maturity. This review shall then take place on an annual basis.
- 20.27. The Prime Contractor will be in Serious Breach under Clause 25 of the Contract if it fails to comply with the Security Standards.

21. Submission of Customer Data

- 21.1. The Prime Contractor must supply to the ESFA the Customer Data, in

accordance with the instructions contained within the Funding Rules.

- 21.2. The Prime Contractor must maintain Customer Files as specified in the Funding Rules and must comply with the Code of Connection. The ESFA reserves the right to make changes to the Code of Connection provided that the ESFA agrees to be responsible for meeting any reasonable incremental costs incurred by the Prime Contractor as a result of any changes that are substantial.
- 21.3. Customer Data collected must be transmitted to the ESFA through the ESFA's web portal <https://hub.fasst.org.uk/Pages/default.aspx>. Access to the ESFA's web portal is restricted and the Prime Contractor agrees to comply with the conditions of use regarding the supply of data to the ESFA set out in this Clause 21 and in the relevant Data Collection Guidance document as amended and updated and which is available on the ESFA's website.
- 21.4. Where the ESFA is concerned about the quality of the Customer Data, including the completeness or accuracy of the data, provided by the Prime Contractor, the ESFA may require the Prime Contractor to supply a data quality improvement plan for how it will rectify the concerns. The ESFA reserves the right to require the Prime Contractor, at its own cost, to carry out such work as the ESFA deems necessary to improve the quality of Customer Data.
- 21.5. Where the Prime Contractor is providing the Services to Customers claiming out of work benefits, it must provide Customer Data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to the Prime Contractor.
- 21.6. Failure to transmit complete and accurate Customer Data in accordance with this Clause 21 will constitute a Serious Breach of Contract in accordance with Clause 25 and may result in payments for this part of the Services being delayed or withheld.
- 21.7. As specified in Clause 14, the ESFA reserves the right to suspend payments to the Prime Contractor under the Contract where the quality of the Customer Data gives rise to concern about the accuracy of the data provided by the Prime Contractor.
- 21.8. The Prime Contractor shall register with UKRLP and maintain contact details on an on-going basis. (<http://www.ukrlp.co.uk/>).

22. Quality Assurance and Raising Standards

- 22.1. The Prime Contractor undertakes to the ESFA that it has the resources and skills necessary to carry out the Prime Contractor's obligations pursuant to this Contract.
- 22.2. The Prime Contractor shall ensure that all activities carried out pursuant to this Contract shall be documented in accordance with the requirements of the ESFA

and shall provide such documentation to them as the ESFA shall request from time to time.

22.3. The Prime Contractor shall continuously seek to improve the Services and raise standards to benefit the Customer. The Prime Contractor shall have the primary responsibility for improving standards and will need to demonstrate to the ESFA satisfaction that it has an effective quality assurance system based on the implementation of its own quality improvement process. The ESFA reserves the right to require the Prime Contractor to provide the ESFA or OFSTED with evidence to support the quality improvement processes.

22.4. The Prime Contractor shall:

22.4.1. ensure minimum levels of performance against agreed profiles, National Targets and key performance indicators within agreed tolerance levels that apply to the Services;

22.4.2. at least meet the standards as set out in the Quality section of Part C of the ITT;

22.4.3. ensure competent and appropriately qualified staff deliver the Services;

22.4.4. be responsible for the professional development and training of its staff and for meeting any legal requirements to ensure that they are appropriately qualified and trained;

22.4.5. use all reasonable endeavours to offer equality of access to the Services;

22.4.6. provide a safe, healthy and supportive environment for Customers and its staff;

22.4.7. provide good management and leadership of the Services;

22.4.8. deliver value for money and financial probity; and

22.4.9. ensure all Sub-Contractors delivering Services under the Contract on behalf of the Prime Contractor comply with the requirements set out in Clauses 22.4.1 to 22.4.8 above.

22.5. The ESFA may assess the quality and delivery of the Services and the Prime Contractor's compliance with the requirements in Clause 22.4.1 to 22.4.9 during the Contract Period. The Prime Contractor will be informed of the outcome of that process.

22.6. Failure by the Prime Contractor to meet the requirements set out in Clauses 22.4.1 to 22.4.9 will result in the Prime Contractor being in Serious Breach of Contract in accordance with Clause 25.

OFSTED Inspection

- 22.7. When the Prime Contractor receives notification from OFSTED that the Services are to be inspected, the Prime Contractor shall on request provide the ESFA with details of its quality improvement activity, and any other relevant information required by OFSTED in accordance with the required timescale of OFSTED. The Prime Contractor must notify the ESFA of the date of the meeting at which OFSTED give feedback on the inspection and allow the ESFA's nominated representative to attend the meeting. The Prime Contractor must confirm to the ESFA in writing the outcome of the inspection within 5 working days of receiving the feedback from OFSTED.
- 22.8. OFSTED may, at any time during the term of this Contract, undertake an inspection of the Prime Contractor. The ESFA will consider the outcome of any such inspection as follows:

Inadequate in part

- 22.8.1. Where OFSTED has assessed the Services to be inadequate in any part, the Prime Contractor will be in Serious Breach of Contract.

Inadequate overall

- 22.8.2. Where the ESFA is made aware that OFSTED has provisionally assessed the Services to be inadequate overall, the ESFA may, at its absolute discretion take one or more of the following actions:
- a) require the Prime Contractor to accept and comply with temporary additional Contract obligations relating to the improvement of the overall Services, including but not limited to, requiring the Prime Contractor to temporarily suspend supply of the Services; and
 - b) commence discussions with the Prime Contractor and relevant stakeholders, either with OFSTED or not, as part of considering what actions as specified in Clauses 25.5 and 25.6 may be taken.
- 22.8.3. Where OFSTED has confirmed its assessment that the Services is inadequate overall, the Prime Contractor will be in Serious Breach of Contract.
- 22.8.4. The ESFA will take action based on OFSTED's provisional and confirmed outcomes in accordance with the provisions of Clauses 25.5 and 25.6 (Serious Breach). Where the ESFA is made aware that the Prime Contractor has made a complaint about the graded outcome of the overall assessment by OFSTED, the ESFA will

continue to progress action under Clause 25.5 or 25.6 but will be mindful of the implications arising from the outcome of a complaint. The ESFA will review any decisions made at such time as outcomes of any complaint are made known.

23. Fraud and Irregularity

23.1. The Prime Contractor shall notify the ESFA immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Contract including, but not limited to, cases of:

23.1.1. collusion with members of the staff of the ESFA or employees of the Department for Education;

23.1.2. computer fraud;

23.1.3. the submission to the ESFA of inaccurate, incomplete, misleading or falsified information for the purpose of a claim for funding;

23.1.4. fraud involving awarding organisations; or

23.1.5. fraud involving sub-contractors,

provided that nothing in this Clause 23 shall require the Prime Contractor to do anything, which may cause it to infringe any Law.

23.2. Where the ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract and payments made hereunder, the ESFA shall have the right of access to the Prime Contractor's premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records and to interview the Prime Contractor's servants or agents engaged with the delivery of the Contract.

23.3. Where the ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract or any other contract between the ESFA and the Prime Contractor and payments made thereunder it shall have the right to:

23.3.1. suspend payments;

23.3.2. require the Prime Contractor to cease offering the Services to new Customers under this Contract and any other contract between the Parties; and/or

23.3.3. terminate this Contract in whole or in part.

23.4. The Parties shall co-operate in the identification of Customers who may be unlawfully claiming benefits. The ESFA may from time to time brief the Prime

Contractor as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Customers. The ESFA shall provide a named contact or telephone answering machine for receiving such information.

24. Other Sources of Funding

- 24.1. Where the Prime Contractor or any of its Sub-Contractors has access to other funding streams, the Prime Contractor or any of its Sub-Contractors will be required to demonstrate through accounting, management information systems and any other relevant evidence (in the sole discretion of the ESFA or any other body undertaking the audit or monitoring), to the ESFA and anybody set out in Clause 13.2 that no double funding has occurred in respect of the Services delivered under the Contract.
- 24.2. Where the ESFA identifies double funding in respect of the Services, or any part thereof, the Prime Contractor will be liable to repay to the ESFA any sums paid, or part thereof, by the ESFA in respect of the Services for which the Prime Contractor has received funding from another source and the ESFA reserves the right to deduct such sums from any monies owed to the Prime Contractor under the Contract or any subsequent Contract.

25. Breach

- 25.1. For the purpose of this Clause 25, the following definitions shall have the meanings set out below:
- 25.2. "**Minor Breach**" shall mean a delay or non-performance by either Party of its obligations under the Contract which does not materially, adversely or substantially affect the performance or delivery of the Services (or Implementation Services);
- 25.3. "**Serious Breach**" shall mean any breach defined as a Serious Breach in the Contract or any breach or breaches which adversely, materially or substantially affect the performance or delivery of the Services (or Implementation Services) or compliance with the terms and conditions of the Contract. Failure to comply with legislation, or actions or omissions by the Prime Contractor that endanger the health or safety of Customers would constitute a Serious Breach.

Minor Breach

- 25.4. Without prejudice to any other remedy, in the event of a Minor Breach, the Parties will adopt the following procedure:
 - 25.4.1. The Party not in breach shall be entitled to serve written notice on the Party in breach, giving full details of the breach and requiring the other Party to remedy the breach within a specified period; and
 - 25.4.2. If the Party in breach fails to remedy the Minor Breach within the time

specified in the notice served under Clause 25.4.1 or such other period as may be agreed between the Parties it shall constitute a Serious Breach which is irremediable by the Party in breach and the Party not in breach shall be entitled to terminate the Contract with immediate effect on notice in writing to the other Party.

Serious Breach

25.5. Without prejudice to any other remedy, in the event of a Serious Breach which is capable of remedy, the Parties shall adopt the following procedure:

25.5.1. The Party not in breach shall be entitled to serve written notice on the other Party giving full details of the breach and requiring the Party in breach to remedy the breach within a specified time period; and

25.5.2. Where the ESFA issues a notice in accordance with Clause 25.5.1, that notice may require the Prime Contractor to do any one or more of the following:

- a) meet improvement indicators to improve the quality of its Services. In which case, the ESFA will meet with the Prime Contractor to discuss and reach agreement on implementation of these actions and improvement indicators and to agree arrangements for monitoring and reviewing progress. In such cases reviews will take place at the frequency specified by the ESFA and in agreement with the Prime Contractor,
- b) require the Prime Contractor to accept and comply with additional Contract obligations relating to the improvement of financial health and/or control arrangements,
- c) require the Prime Contractor to accept and comply with additional Contract obligations relating to the improvement of the Services,
- d) require the Prime Contractor to accept and comply with additional Contract obligations relating to the improvement of the Services assessed as inadequate where OFSTED has assessed the Services to be inadequate in any Part,
- e) require the Prime Contractor to accept and comply with additional Contract obligations relating to the improvement of the overall Services where OFSTED has confirmed its assessment that the Services is inadequate overall,
- f) agree on detailed improvement plans and measures that set out clearly the expected timescale for improvement,
- g) agree on arrangements for more frequent monitoring of quality improvement plans.
- h) exercise the step-in rights set out in Clause 28, and / or

- i) suspend all or part of the Services.

25.6. In the event that a Serious Breach of the Contract by the Prime Contractor is irremediable or cannot be remedied within the period specified in the notice served under Clause 25.5.1 (or such other period as may be agreed between the Parties) the ESFA may do either or both of the following:

25.6.1. cease, reduce or suspend funding to the Prime Contractor, or recover funding paid to the Prime Contractor, in respect of that part of the Services to which the Serious Breach relates; and

25.6.2. at its sole discretion terminate the Contract (in whole or in part) with immediate effect on notice in writing to the other Party.

26. Termination

26.1. The ESFA may terminate this Contract (in whole or in part) by issuing a Termination Notice to the Prime Contractor:

26.1.1. with 3 months' notice at any time if funding for the Services is withdrawn by central government in accordance with Clause 14.3.1;

26.1.2. with immediate effect where the Contract should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;

26.1.3. with immediate effect where the ESFA has become aware that the Prime Contractor should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;

26.1.4. with immediate effect where there is a failure by the Supplier to comply in the performance of the Services (or Implementation Services) with legal obligations in the fields of environmental, social or labour Law;

26.1.5. with immediate effect where specified in Clause 25 (Breach);

26.1.6. with immediate effect where the Prime Contractor has:

- a) breached the Code of Connection three times in any rolling six month period, provided that the ESFA shall advise the Prime Contractor in writing of the occurrence of each such breach of the Code of Connection,
- b) failed, for any three months in a rolling six month period, to achieve the Customer Volume Target,
- c) committed any three Minor Breaches of the Contract

- d) during any rolling nine month period, and/or failed, for any three months in a rolling nine month period, to achieve the National Targets;
- 26.1.7. with immediate effect where otherwise specified in this Contract including pursuant to:
 - a) Clause 16 (Prohibited Activities), and
 - b) Clause 23 (Fraud and Irregularity).
- 26.1.8. with immediate effect where the Prime Contractor commits a Serious Breach under:
 - a) Clause 6 (Freedom of Information and Confidentiality),
 - b) Clause 17 (Data Protection and Protection of Personal Data), and/or
 - c) Clause 20 (Security Standards);
- 26.1.9. with immediate effect if the Prime Contractor suffers an Insolvency Event or a change of Control (unless the ESFA has given its prior written consent to the particular change of Control, which subsequently takes place as proposed);
- 26.1.10. with immediate effect if a change of Control of a Sub-Contractor occurs unless, within 6 months of being notified by the ESFA that it objects to such change of Control, the Prime Contractor terminates the relevant Sub-contract and replaces it with a comparable Sub-contract which is approved by the ESFA pursuant to Clause 5;
- 26.1.11. with immediate effect if a Force Majeure Event affecting the Prime Contractor endures for a continuous period of more than 90 days; or
- 26.1.12. with immediate effect if the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure, and this Contract shall terminate on the date specified in the Termination Notice.
- 26.2. Where the ESFA is terminating this Contract under Clause 26.1.5 it may rely on a single Serious Breach or on a number of Serious Breaches or repeated Serious Breaches (whether of the same or different obligations and regardless of whether such breaches are remedied) which taken together constitute a Serious Breach.
- 26.3. The Prime Contractor may, by issuing a Termination Notice to the ESFA, terminate:
 - 26.3.1. this Contract if the ESFA fails to pay an undisputed sum due to the Prime Contractor under this Contract which in aggregate exceeds **£250,000** and such amount remains outstanding 40 Working Days after the receipt by the ESFA of a notice of non-payment from the

Prime Contract; or

- 26.3.2. any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than 90 days, and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice).
- 26.4. If the Prime Contractor notifies the ESFA pursuant to Clause 26.3 (*Termination by the Prime Contractor*) that it intends to terminate this Contract in part and the ESFA, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the ESFA requirements, then the ESFA shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice on the Prime Contractor within 1 month of receiving the Prime Contractor's Termination Notice. For the purpose of this Clause 26.4, in assessing the significance of any part of the ESFA requirements, regard shall be had not only to the proportion of that part to the ESFA requirements as a whole, but also to the importance of the relevant part to the ESFA.
- 26.5. The Parties shall agree the effect of any change necessitated by a Partial Termination, including the effect the Partial Termination may have on any other Services.
- 26.6. Where the ESFA issues a Termination Notice to the Prime Contractor, the termination will take effect on the date specified in the Termination Notice.

27. Consequences of Expiry or Termination

- 27.1. The provisions of Clauses 6 (Confidentiality and Freedom of Information), 7 (Intellectual Property Rights), 11 (Limitations on Liability), 17 (Protection of Personal Data), 19 (Employment Indemnity), 27 (Consequences of Expiry or Termination), 34 (Third Party Rights), 36 (Governing Law and Jurisdiction), 37 (Disputes), 42 (Severance) and 43 (Entire Agreement), and the provisions of Schedules 2 (Staff Transfers) and 3 (Exit Management) shall survive the termination or expiry of this Contract.
- 27.2. Termination under Clause 26 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Contract.
- 27.3. The Prime Contractor shall upon termination of the Contract immediately deliver up to the ESFA all correspondence, documents, specification papers and other property belonging to the ESFA, which may be in its possession or under its control.
- 27.4. The Prime Contractor must not offer the Services to new Customers after notice of termination of the Contract has been given under Clauses 26. The ESFA will

not be liable to make payments in respect of any Customers recruited in breach of this Clause.

- 27.5. The Parties shall comply with the provisions of Schedule 2 (*Staff Transfer*), Schedule 3 (*Exit Management*), and any current Exit Plan in relation to orderly transition of the Services to the ESFA or a Replacement Prime Contractor.
- 27.6. The Prime Contractor shall notify the ESFA in writing immediately upon the occurrence of an Insolvency Event.

28. Step-in Rights

28.1.1. On the occurrence of a Step-In Trigger Event, the ESFA may serve notice on the Prime Contractor (a “**Step-In Notice**”) that it will be taking action under this Clause 28 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Prime Contractor may require any third parties to comply with a confidentiality undertaking equivalent to Clause 6 (*Confidentiality*)). The Step-In Notice shall set out the following:

- a) the action the ESFA wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);
- b) the Step-In Trigger Event that has occurred and whether the ESFA believes that the Required Action is due to the Prime Contractor's default;
- c) the date on which it wishes to commence the Required Action;
- d) the time period which it believes will be necessary for the Required Action;
- e) whether the ESFA will require access to the Prime Contractor's premises; and
- f) to the extent practicable, the impact that the ESFA anticipates the Required Action will have on the Prime Contractor's obligations to provide the Services during the period that the Required Action is being taken.

28.2. Following service of a Step-In Notice, the ESFA shall:

- 28.2.1. 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;
- 28.2.2. keep records of the Required Action taken and provide information about the Required Action to the Prime Contractor;
- 28.2.3. co-operate wherever reasonable with the Prime Contractor in order to

enable the Prime Contractor to continue to provide the Services in relation to which the ESFA is not assuming control; and

- 28.2.4. act reasonably in mitigating the cost that the Prime Contractor will incur as a result of the exercise of the ESFA's rights under this Clause 28.

28.3. For so long as and to the extent that the Required Action is continuing, then:

- 28.3.1. the Prime Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and

- 28.3.2. no deductions shall be applicable in relation to funding in respect of Services that are the subject of the Required Action.

28.4. Before ceasing to exercise its step in rights under this Clause 28 the ESFA shall deliver a written notice to the Prime Contractor (a **"Step-Out Notice"**), specifying:

- 28.4.1. the Required Action it has actually taken; and

- 28.4.2. the date on which the ESFA plans to end the Required Action (the **"Step-Out Date"**) subject to the ESFA being satisfied with the Prime Contractor's ability to resume the provision of the Services and the Prime Contractor's plan developed in accordance with Clause 28.5 below.

28.5. The Prime Contractor shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the ESFA's approval a draft plan (a **"Step-Out Plan"**) relating to the resumption by the Prime Contractor of the Services, including any action the Prime Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

28.6. If the ESFA does not approve the draft Step-Out Plan, the ESFA shall inform the Prime Contractor of its reasons for not approving it. The Prime Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the ESFA for the ESFA's approval. The ESFA shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

28.7. The Prime Contractor shall bear its own costs in connection with any step-in by the ESFA under this Clause 28, provided that the ESFA shall reimburse the Prime Contractor's reasonable additional expenses incurred directly as a result of any step-in action taken by the ESFA under:

- 28.7.1. Point (c) of 28.1.1 of the definition of a Step-In Trigger Event; or
- 28.7.2. Points (d), (e) and (f) of 28.1.1 of the definition of a Step-In Trigger Event (insofar as the primary cause of the ESFA serving the Step-In Notice is identified as not being the result of the Prime Contractor's

default).

29. Force Majeure

- 29.1. Subject to the remaining provisions of this Clause 29, a Party may claim relief under this Clause 29 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Prime Contractor in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or Prime Contractor shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or Prime Contractor is itself impeded by a Force Majeure Event from complying with an obligation to the Prime Contractor.
- 29.2. The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 29.3. If the Prime Contractor is the Affected Party, it shall not be entitled to claim relief under this Clause 29 to the extent that consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.
- 29.4. Subject to Clause 29.5 below, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 29.5. The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Prime Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 29.6. Where, as a result of a Force Majeure Event:
 - 29.6.1. an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clause 26.1.11 (*Termination by the ESFA*) or Clause 26.3.2 (*Termination by the Prime Contractor*); and

- b) neither Party shall be liable for any default arising as a result of such failure;

29.6.2. the Prime Contractor fails to perform its obligations in accordance with this Contract:

- a) the ESFA shall not be entitled during the continuance of the Force Majeure Event to exercise its rights under Clause 28 (Step-in Rights) as a result of such failure;
- b) the Prime Contractor shall be entitled to receive payment of the funds (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

29.7. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

29.8. Relief from liability for the Affected Party under this Clause 29 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 29.7.

30. Public Reputations of the Parties/Press Releases

30.1. Both Parties recognise their respective public reputations and legal responsibilities. Each Party shall use all reasonable endeavours not to harm or compromise these.

30.2. The text of any press release or other communication to be published by or in the media concerning the subject matter of this Contract shall require the approval of each Party which shall not be unreasonably withheld or delayed.

31. Retention of Documents

31.1. The Prime Contractor and its Sub-Contractors shall maintain original invoices; management information returns and all other documents necessary to verify the Services in relation to this Contract for 6 years from the end of the financial year in which the last payment is made.

31.2. The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising.

32. Status of Contract

- 32.1. Nothing in this Contract shall have the effect of making the Prime Contractor the servant or agent of the ESFA.

33. Waiver

- 33.1. No failure or delay on the part of either Party hereto to exercise any right or remedy under this Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Contract are cumulative and are not exclusive of any rights or remedies provided by Law.

34. Third Party Rights

- 34.1. The provisions of Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part A, Paragraphs 2.1 and 2.3 of Part B, Paragraphs 1.4, 2.3 and 2.8 of Part C and the Pensions Annex to Schedule 1 (Staff Transfer) (together "Third Party Provisions") confer benefits on persons named in such provisions other than the Parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contract (Rights of Third Parties) Act 1999 ("CRTPA").
- 34.2. Subject to Clause 34.1 above, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 34.3. No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the ESFA, which may, if given, be given on and subject to such terms as the ESFA may determine.
- 34.4. Any amendments or modifications to this Contract may be made, and any rights created under Clause 34.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

35. Notices

- 35.1. Any notice or other document to be given under this Contract shall be in writing and shall be deemed to have been duly given if left at or sent by first class post by Royal Mail Special Delivery or other fast postal service or by facsimile or other electronic media to a Party at the address or relevant telecommunications number for such Party or such other address as the Party may from time to time designate by written notice to the other
- 35.2. All such notices and documents shall be in the English language. Any notice or other document shall be deemed to have been received by the addressee two working days following the date of despatch of the notice or other document by post or, where the notice or other document is sent by hand or on the day of

delivery or where notice is given by facsimile or other electronic media, on the working day following the delivery or transmission provided that a printed report is obtained confirming successful transmission or if the addressee acknowledges receipt. To prove the giving of a notice or other document it shall be sufficient to show that it was despatched.

36. Governing Law and Jurisdiction

- 36.1. This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 36.2. Subject to Clause 37 (Dispute Resolution), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

37. Dispute Resolution

- 37.1. Any dispute, difference or question arising between the Parties either during the currency of the Contract or afterwards shall be referred to the nominated contacts for the ESFA and the Prime Contractor for discussion and review in order to try to resolve the same.
- 37.2. In the event of the nominated contacts being unable to resolve the relevant issue, either party may request in writing that the matter is referred to the ESFA's nominated representative and the Prime Contractor's representative nominated for this purpose (jointly "the Dispute Resolution Panel") for formal review and consideration. Any request for referral to the Dispute Resolution Panel must include details of the dispute and any proposals to resolve it.
- 37.3. The Dispute Resolution Panel will meet within 28 days of receiving a request for referral made in accordance with Clause 37.2 above.

38. Feedback and Complaints

- 38.1. The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Services shall rest with the Prime Contractor. The Prime Contractor shall have procedures in place, which are acceptable to the ESFA, to gather and act upon feedback and complaints from Customers and/or their representatives and employers and the wider community.
- 38.2. The Prime Contractor must ensure that Customers are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Customers who wish to complain.
- 38.3. The Prime Contractor shall be responsible for resolving complaints in

accordance with its own procedures and any guidance issued by the ESFA.

- 38.4. Where a complaint has not been resolved to the satisfaction of the complainant the Prime Contractor will advise the complainant of his or her right to complain to the ESFA and co-operate with any investigation carried out by the ESFA and act on any recommendations made by the ESFA following the investigation.

39. State Aid

- 39.1. The Prime Contractor should satisfy itself, if the European rules on State Aid apply to the Services delivered under this Contract.
- 39.2. Where the rules on State Aid apply, the ESFA will supply to the Prime Contractor details of the records that the Prime Contractor will need to collect and retain.
- 39.3. The ESFA reserves the right to require the Prime Contractor to obtain a contribution towards the cost of the Services delivered under this Contract from the employer of any participant. Where a contribution is required, the ESFA will confirm to the Prime Contractor in writing the exact percentage of the contribution.
- 39.4. Where ESFA requires the Prime Contractor to obtain a contribution towards the cost of the Services under Clause 39.3 above, the Prime Contractor must provide evidence that the contribution has been received.
- 39.5. In the event that any funding paid under this Contract is deemed to constitute unlawful state aid the ESFA reserves the right to require immediate repayment of any such funding.

40. Warranties

- 40.1. Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the maximum extent permitted by Law.

41. Interpretation

- 41.1. In this Contract where the context admits:
- 41.1.1. The singular includes the plural and vice versa;
 - 41.1.2. Reference to a gender includes the other gender and the neuter;
 - 41.1.3. References to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central government body;

- 41.1.4. A reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 41.1.5. The words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- 41.1.6. References to “writing” including typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 41.1.7. The headings are for ease of reference only and shall not affect the interpretation or construction of this Contract;
- 41.1.8. References to clauses and schedules are to clauses and schedules of these Terms and Conditions, and references in any schedule to paragraphs are references to the paragraphs of the schedules to these Terms and Conditions;
- 41.1.9. References to the Funding Rules are references to the Funding Rules document as amended from time to time.
- 41.1.10. References to this Contract are references to this Contract as amended from time to time.
- 41.2. Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the relevant hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Prime Contractor shall notify the ESFA and the parties shall update the Contract with a reference to the replacement hyperlink.
- 41.3. In entering into this Contract the ESFA is acting as part of the Crown.

42. Severance

- 42.1. If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.

43. Entire Contract / Amendments

- 43.1. The Contract shall comprise the following (listed in order of precedence):

- 43.1.1. Terms and Conditions and Schedules to them;
 - 43.1.2. Funding Rules; and
 - 43.1.3. Code of Connection.
- 43.2. In the event of (and to the extent of) any material conflict or inconsistency between the Contract documents listed above, the terms of the document placed higher in the list will prevail.
- 43.3. This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 43.4. This Contract may not be varied except by an instrument in writing signed by the Parties.
- 43.5. Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation (whether made innocently or negligently) other than those expressly set out in this Contract.
- 43.6. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 43.7. Nothing in this Clause 43 shall operate to limit the liability of either party for fraud, fraudulent misrepresentation or fraudulent concealment.

SCHEDULE 1

AREA: WEST MIDLANDS AND STAFFORDSHIRE



^[1] The geographical areas cover all unitary upper tier local authorities in England. Whilst some have similar names they do differ from local authority areas.

Area Name	Geographical Area Covered ^[1]
East of England and Buckinghamshire	Buckinghamshire, Hertfordshire, Cambridgeshire, Central Bedfordshire, Bedford, Luton, Milton Keynes, Suffolk, Norfolk, Peterborough, Southend on Sea, Thurrock, Essex.
East Midlands and Northamptonshire	Derby, Derbyshire, Leicester, Leicestershire, Lincolnshire, Nottingham, Nottinghamshire, Rutland, Northamptonshire
London	Barking & Dagenham, Barnet, Camden, City of London, Enfield, Hackney, Haringey, Havering, Islington, Kensington & Chelsea, Newham, Redbridge, Tower Hamlets, Waltham Forest, Westminster, Bexley, Brent, Bromley, Croydon, Ealing, Greenwich, Hammersmith & Fulham, Harrow, Hillingdon, Hounslow, Kingston upon Thames, Lambeth, Lewisham, Merton, Richmond upon Thames, Southwark, Sutton, Wandsworth
North East and Cumbria	Cumbria, Northumberland, County Durham, Gateshead, Newcastle upon Tyne, North Tyneside, South Tyneside, Sunderland, Hartlepool, Middlesbrough, Redcar & Cleveland, Stockton on Tees, Darlington
North West	Lancashire, Blackpool, Blackburn & Darwen, Sefton, Wirral, Liverpool, Knowsley, Halton, St Helens, Cheshire East, Cheshire West and Chester, Warrington, Trafford, Stockport, Tameside, Manchester, Salford, Wigan, Bolton, Bury, Rochdale, Oldham.
South East	West Berkshire, Slough, Reading, Bracknell Forest, Windsor & Maidenhead, Wokingham, Hampshire, Surrey, Southampton, Portsmouth, West Sussex, East Sussex, Kent, Medway, Isle of Wight, Brighton & Hove
South West and Oxfordshire	Bath & NE Somerset, Bristol, Isles of Scilly, North Somerset, Somerset, Dorset, Bournemouth, Poole, Devon, Plymouth, Torbay, Cornwall, Gloucestershire, South Gloucestershire, Oxfordshire, Swindon, Wiltshire
West Midlands including Staffordshire	Telford & Wrekin, Shropshire, Herefordshire, Worcestershire, Warwickshire, Coventry, Birmingham, Sandwell, Dudley, Walsall, Wolverhampton, Solihull, Staffordshire, Stoke on Trent
Yorkshire and the Humber	North Yorkshire, York, East Riding of Yorkshire, Doncaster, Hull, Rotherham, Sheffield, Barnsley, Kirklees, Wakefield, Leeds, Bradford, Calderdale, North and North East Lincolnshire

^[1] The geographical areas cover all unitary upper tier local authorities in England. Whilst some have similar names they do differ from local authority areas.

SCHEDULE 2

Staff Transfers

1. DEFINITIONS

1.1. The definitions in the Contract and this Schedule shall apply to this Schedule and Pensions Annex:

“Former Prime Contractor”	a Prime Contractor supplying services to the ESFA before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Prime Contractor (or any sub-contractor of any such sub-contractor);
“HMRC”	HM Revenue & Customs
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
“Notified Sub-contractor”	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Former Prime Contractor Employees will transfer on a Relevant Transfer Date;
“Prime Contractor’s Final Prime Contractor Personnel List”	a list provided by the Prime Contractor of all Prime Contractor Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Prime Contractor’s Provisional Prime Contractor Personnel List”	a list prepared and updated by the Prime Contractor of all Prime Contractor Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Prime Contractor;
“Replacement Sub-contractor”	a sub-contractor of the Replacement Prime Contractor to whom Transferring Prime Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Prime Contractor or any Sub-contractor to a Replacement Prime Contractor or a Replacement Sub-contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
“Staffing Information”	in relation to all persons identified on the Prime Contractor's Provisional Prime Contractor Personnel List or Prime Contractor's Final Prime Contractor Personnel List, as the case may be, such information as the ESFA may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format: (a) their ages, dates of commencement of employment or engagement, gender and place of work; (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; (e) their wages, salaries, bonuses and profit sharing arrangements as applicable; (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

	(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;
“Transferring Former Prime Contractor Employees”	in relation to a Former Prime Contractor, those employees of the Former Prime Contractor to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Prime Contractor Employees”	those employees of the Prime Contractor and/or the Prime Contractor’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

2.1. Where a provision in this Schedule imposes an obligation on the Prime Contractor to provide an indemnity, undertaking or warranty, the Prime Contractor shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the ESFA, Former Prime Contractor, Replacement Prime Contractor or Replacement Sub-contractor, as the case may be.

PART A: TRANSFERRING FORMER PRIME CONTRACTOR EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

- 1.1 The ESFA and the Prime Contractor agree that:
- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Prime Contractor Employees; and
 - (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Prime Contractor and the Transferring Former Prime Contractor Employees (except in relation to any terms applied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Prime Contractor and/or Notified Sub-contractor and each such Transferring Former Prime Contractor Employee.
- 1.2 The ESFA shall procure that each Former Prime Contractor shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Prime Contractor Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Prime Contractor shall make, and the ESFA shall procure that each Former Prime Contractor makes, any necessary apportionments in respect of any periodic payments.

2 FORMER PRIME CONTRACTOR INDEMNITIES

- 2.1 Subject to Paragraph (f), the ESFA shall procure that each Former Prime Contractor shall indemnify the Prime Contractor and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission by the Former Prime Contractor in respect of any Transferring Former Prime Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Prime Contractor Employee arising before the Relevant Transfer Date;
 - (b) the breach or non-observance by the Former Prime Contractor arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Prime Contractor Employees; and/or

- (ii) any custom or practice in respect of any Transferring Former Prime Contractor Employees which the Former Prime Contractor is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Prime Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Prime Contractor Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Prime Contractor to the Prime Contractor and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Prime Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Prime Contractor Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Prime Contractor other than a Transferring Former Prime Contractor Employee for whom it is alleged the Prime Contractor and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Prime Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Prime Contractor Employee relating to any act or omission of the Former Prime Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Prime Contractor or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Prime Contractor or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Prime Contractor Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Prime Contractor or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Prime Contractor and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the ESFA as a Transferring Former Prime Contractor Employee claims, or it is determined in relation to any person who is not identified by the ESFA as a Transferring Former Prime Contractor Employee, that his/her contract of employment has been transferred from a Former Prime Contractor to the Prime Contractor and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Prime Contractor shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the ESFA and, where required by the ESFA, to the Former Prime Contractor; and
- (b) the Former Prime Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Prime Contractor and/or the Notified Sub-contractor or take such other reasonable steps as the Former Prime Contractor considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Prime Contractor and/or the ESFA, the Prime Contractor shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Prime Contractor and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Prime Contractor and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with

all applicable proper employment procedures set out in Law, the ESFA shall procure that the Former Prime Contractor indemnifies the Prime Contractor and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Prime Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Prime Contractor and/or any Sub-contractor; or
 - (ii) any claim that the termination of employment was unfair because the Prime Contractor and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Prime Contractor and/or any Notified Sub-contractor (as appropriate) to the ESFA and, if applicable, the Former Prime Contractor, within 6 months of the Commencement Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Prime Contractor nor dismissed by the Prime Contractor and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Prime Contractor or Notified Sub-contractor and the Prime Contractor shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 PRIME CONTRACTOR INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2 below, the Prime Contractor shall indemnify the ESFA and/or the Former Prime Contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Prime Contractor or any Sub-contractor in respect of any Transferring Former Prime Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Prime Contractor Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Prime Contractor or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Prime Contractor Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Prime Contractor Employees which the Prime Contractor or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Prime Contractor Employees arising from or connected with any failure by the Prime Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Prime Contractor or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Prime Contractor Employees to their material detriment on or after their transfer to the Prime Contractor or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Prime Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Prime Contractor or a Sub-contractor to, or in respect of, any Transferring Former Prime Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the ESFA and/or the Former Prime Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Former Prime Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Prime Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Prime Contractor to the Prime Contractor or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Prime Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Prime Contractor Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Former Prime Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Prime Contractor Employee relating to any act or omission of the Prime Contractor or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Prime Contractor's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Prime Contractor or any Sub-contractor to comply with its obligations under Paragraph 2.8above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Prime Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Prime Contractor's failure to comply with its obligations under the Employment Regulations.

3.3 The Prime Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and

discharge, all its obligations in respect of all the Transferring Former Prime Contractor Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Prime Contractor and the Former Prime Contractor.

4 INFORMATION

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

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Prime Contractor shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the ESFA relating to pensions in respect of any Transferring Former Prime Contractor Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - (d) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in writing between the parties by way of a variation to the Contract.

6 PROCUREMENT OBLIGATIONS

- 6.1 Notwithstanding any other provisions of this Part A, where in this Part A the ESFA accepts an obligation to procure that a Former Prime Contractor does or

does not do something, such obligation shall be limited so that it extends only to the extent that the ESFA's contract with the Former Prime Contractor contains a contractual right in that regard which the ESFA may enforce, or otherwise so that it requires only that the ESFA must use reasonable endeavours to procure that the Former Prime Contractor does or does not act accordingly.

7 PENSIONS

- 7.1 The Prime Contractor shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Pension Annex.

PART B: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1. The ESFA and the Prime Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the ESFA and/or any Former Prime Contractor.
- 1.2. If any employee of the ESFA and/or a Former Prime Contractor claims, or it is determined in relation to any employee of the ESFA and/or a Former Prime Contractor, that his/her contract of employment has been transferred from the ESFA and/or the Former Prime Contractor to the Prime Contractor and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - (a) the Prime Contractor shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the ESFA and, where required by the ESFA, give notice to the Former Prime Contractor; and
 - (b) the ESFA and/or the Former Prime Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Prime Contractor or the Sub-contractor (as appropriate) or take such other reasonable steps as the ESFA or Former Prime Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3. If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the ESFA and/or the Former Prime Contractor), the Prime Contractor shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4. If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
 - (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,

the Prime Contractor and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

- 2.1. Subject to the Prime Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.1 to 1.4 and in accordance with all applicable employment procedures set out in applicable

Law and subject also to Paragraph 2.4 below, the ESFA shall:

- (a) indemnify the Prime Contractor and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the ESFA referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Prime Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - (b) procure that the Former Prime Contractor indemnifies the Prime Contractor and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Prime Contractor referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Prime Contractor takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2. If any such person as is described in Paragraph 1.2 is neither re-employed by the ESFA and/or the Former Prime Contractor as appropriate nor dismissed by the Prime Contractor and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Prime Contractor and/or the Sub-contractor (as appropriate) and the Prime Contractor shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law and where relevant shall comply with the following Pensions Annex.
- 2.3. Where any person remains employed by the Prime Contractor and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Prime Contractor and/or the Sub-contractor and the Prime Contractor shall indemnify the ESFA and any Former Prime Contractor, and shall procure that the Sub-contractor shall indemnify the ESFA and any Former Prime Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Prime Contractor and/or employees of the Sub-contractor.
- 2.4. The indemnities in Paragraph 2.1:
 - (a) shall not apply to:
 - (i) any claim for:
 - A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Prime Contractor and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Prime Contractor and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

(iii) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Prime Contractor and/or any Sub-contractor to the ESFA and, if applicable, Former Prime Contractor within 6 months of the Commencement Date.

3. PROCUREMENT OBLIGATIONS

3.1. Where in this Part B the ESFA accepts an obligation to procure that a Former Prime Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the ESFA's contract with the Former Prime Contractor contains a contractual right in that regard which the ESFA may enforce, or otherwise so that it requires only that the ESFA must use reasonable endeavours to procure that the Former Prime Contractor does or does not act accordingly.

PART C: EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Prime Contractor agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the ESFA of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Contract;
- (c) the date which is 12 months before the end of the Contract Period; and
- (d) receipt of a written request of the ESFA at any time (provided that the ESFA shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Prime Contractor's Provisional Prime Contractor Personnel List, together with the Staffing Information in relation to the Prime Contractor's Provisional Prime Contractor Personnel List and it shall provide an updated Prime Contractor's Provisional Prime Contractor Personnel List at such intervals as are reasonably requested by the ESFA.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Prime Contractor shall provide to the ESFA or at the direction of the ESFA to any Replacement Prime Contractor and/or any Replacement Sub-contractor:

- (a) the Prime Contractor's Final Prime Contractor Personnel List, which shall identify which of the Prime Contractor Personnel are Transferring Prime Contractor Employees; and
- (b) the Staffing Information in relation to the Prime Contractor's Final Prime Contractor Personnel List (insofar as such information has not previously been provided).

1.3 The ESFA shall be permitted to use and disclose information provided by the Prime Contractor under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Prime Contractor and/or Replacement Sub-contractor.

1.4 The Prime Contractor warrants, for the benefit of the ESFA, any Replacement Prime Contractor, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Prime Contractor agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Prime Contractor's Provisional Prime

Contractor Personnel List and shall not without the approval of the ESFA (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Prime Contractor Personnel listed on the Prime Contractor Provisional Prime Contractor Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Prime Contractor Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Prime Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Prime Contractor's Provisional Prime Contractor Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Prime Contractor's Provisional Prime Contractor Personnel List save by due disciplinary process; and;
- (g) shall promptly notify, and procure that each Sub-contractor shall promptly notify, the ESFA or, at the direction of the ESFA, any Replacement Prime Contractor and any Replacement Sub-contractor of any notice to terminate employment given by the Prime Contractor or relevant Sub-contractor or received from any persons listed on the Prime Contractor's Provisional Prime Contractor Personnel List regardless of when such notice takes effect.

1.6 During the Contract Period, the Prime Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the ESFA any information the ESFA may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) the extent to which each employee qualifies for membership of any

Public Sector Pension Scheme, THE PRIME CONTRACTOR'S Scheme or any broadly comparable scheme set up pursuant to the provisions of the Pensions Annex of this Schedule (as appropriate); and

- (d) a description of the nature of the work undertaken by each employee by location.

1.7 The Prime Contractor shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the ESFA, any Replacement Prime Contractor and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Prime Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Prime Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Prime Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the ESFA or, at the direction of the ESFA, to any Replacement Prime Contractor and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Prime Contractor's Final Prime Contractor Personnel List who is a Transferring Prime Contractor Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

2.1 The ESFA and the Prime Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Prime Contractor and/or a Replacement Sub-contractor. Such change in the identity of the Prime Contractor of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The ESFA and the Prime Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Prime Contractor and the Transferring Prime Contractor Employees (except in relation to any contract terms misapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Prime Contractor and/or a

Replacement Sub-contractor (as the case may be) and each such Transferring Prime Contractor Employee.

- 2.2 The Prime Contractor shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Prime Contractor Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Prime Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Former Public Sector Employee's participation in any Public Sector Pension Scheme or THE PRIME CONTRACTOR'S Scheme which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Prime Contractor and/or the Sub-contractor (as appropriate); and (ii) the Replacement Prime Contractor and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Prime Contractor shall indemnify the ESFA and/or the Replacement Prime Contractor and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Prime Contractor or any Sub-contractor in respect of any Transferring Prime Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Prime Contractor Employee whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Prime Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Prime Contractor Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Prime Contractor Employees which the Prime Contractor or any Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Prime Contractor Employees arising from or connected with any failure by the Prime Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE

and primary and secondary national insurance contributions:

- (i) in relation to any Transferring Prime Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not identified in the Prime Contractor's Final Prime Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Prime Contractor to the ESFA and/or Replacement Prime Contractor and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Prime Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Prime Contractor Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Prime Contractor or any Sub-contractor other than a Transferring Prime Contractor Employee identified in the Prime Contractor's Final Prime Contractor Personnel List for whom it is alleged the ESFA and/or the Replacement Prime Contractor and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Prime Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Prime Contractor Employee relating to any act or omission of the Prime Contractor or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the ESFA and/or Replacement Prime Contractor to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Prime Contractor and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Prime Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the

Replacement Prime Contractor and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

- (b) arising from the Replacement Prime Contractor's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Prime Contractor's Final Prime Contractor Personnel List claims, or it is determined in relation to any person who is not identified in the Prime Contractor's Final Prime Contractor Personnel List that his/her contract of employment has been transferred from the Prime Contractor or any Sub-contractor to the Replacement Prime Contractor and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the ESFA shall procure that the Replacement Prime Contractor shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Prime Contractor; and
- (b) the Prime Contractor may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Prime Contractor and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Prime Contractor or a Sub-contractor, the ESFA shall procure that the Replacement Prime Contractor shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Replacement Prime Contractor and/or Replacement Sub-contractor, as appropriate may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Prime Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Prime Contractor shall indemnify the Replacement Prime Contractor and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of

Paragraph 2.7 provided that the Replacement Prime Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 - (ii) in any case in relation to any alleged act or omission of the Replacement Prime Contractor and/or Replacement Sub-contractor; or
 - (iii) any claim that the termination of employment was unfair because the Replacement Prime Contractor and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Prime Contractor and/or Replacement Sub-contractor to the Prime Contractor within 6 months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Prime Contractor or any Sub-contractor nor dismissed by the Replacement Prime Contractor and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Prime Contractor Employee.

2.11 The Prime Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Prime Contractor's Final Prime Contractor Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Former Public Sector Employee's participation in any Public Sector Pension Scheme and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Prime Contractor and/or any Sub-contractor; and
 - (b) the Replacement Prime Contractor and/or the Replacement Sub-contractor.
- 2.12 The Prime Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the ESFA and any Replacement Prime Contractor and/or Replacement Sub-contractor, in writing such information as is necessary to enable the ESFA, the Replacement Prime Contractor and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The ESFA shall procure that the Replacement Prime Contractor and/or Replacement Sub-contractor, shall promptly provide to the Prime Contractor and each Sub-contractor in writing such information as is necessary to enable the Prime Contractor and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14 below, the ESFA shall procure that the Replacement Prime Contractor indemnifies the Prime Contractor on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
 - (a) any act or omission of the Replacement Prime Contractor and/or Replacement Sub-contractor in respect of any Transferring Prime Contractor Employee identified in the Prime Contractor's Final Prime Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Prime Contractor Employee;
 - (b) the breach or non-observance by the Replacement Prime Contractor and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Prime Contractor Employees identified in the Prime Contractor's Final Prime Contractor Personnel List ; and/or
 - (ii) any custom or practice in respect of any Transferring Prime Contractor Employees identified in the Prime Contractor's Final Prime Contractor Personnel List which the Replacement Prime Contractor and/or Replacement Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Prime Contractor Employees identified in the Prime Contractor's Final Prime Contractor Personnel List arising from or connected with any failure by the Replacement Prime Contractor and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - (d) any proposal by the Replacement Prime Contractor and/or Replacement

Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Prime Contractor Employees identified in the Prime Contractor's Final Prime Contractor Personnel List on or after their transfer to the Replacement Prime Contractor or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Prime Contractor's Final Prime Contractor Personnel List who would have been a Transferring Prime Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Replacement Prime Contractor or Replacement Sub-contractor to, or in respect of, any Transferring Prime Contractor Employee identified in the Prime Contractor's Final Prime Contractor Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Prime Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Prime Contractor Employee identified in the Prime Contractor's Final Prime Contractor Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Prime Contractor Employee identified in the Prime Contractor's Final Prime Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Prime Contractor or Sub-contractor, to the Replacement Prime Contractor or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Prime Contractor or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Prime Contractor Employees identified in the Prime Contractor's Final Prime Contractor Personnel List in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Prime Contractor Employee identified in the Prime Contractor's Final Prime Contractor

Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Prime Contractor Employee relating to any act or omission of the Replacement Prime Contractor or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

- 2.14 The indemnities in Paragraph 2.13 above shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Prime Contractor and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Prime Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

Pension Annex

Pensions Annex

1.1. Definitions

The definitions in the Contract, Schedule 2 and this Pensions Annex shall apply to this Pensions Annex:

- 1.1.1. "Admission Agreement" means the CSPA Admission Agreement and/or the LGPS Admission Agreement as the context requires;
- 1.1.2. "Broadly Comparable" means (i) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate relating to the Public Sector Pension Scheme at the Commencement Date; and (ii) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department, and "Broad Comparability" shall be construed accordingly;
- 1.1.3. "COSOP" means the Cabinet Office Statement of Practice: Staff Transfers in the Public Sector 2013;
- 1.1.4. "CSPA Admission Agreement" means an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date or Commencement Date to be entered into by the Prime Contractor under which it agrees to participate in the CSP Schemes in respect of the Services;
- 1.1.5. "CSP Schemes" means the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
- 1.1.6. "Former Prime Contractor's Scheme(s)" means any pension scheme established by the Former Prime Contractor which has been certified as Broadly Comparable to the relevant Public Sector Pension Scheme;
- 1.1.7. "Former Public Sector Employees" means any of the following:
 - 1.1.7.1. Transferring Former Prime Contractor Employee, and/or

1.1.7.2. anyone who transfers under Part B and whose employment is not terminated in accordance with paragraph 1.4 of Part B, and/or

1.1.7.3. where the Former Prime Contractor becomes the Prime Contractor those employees working on the Services who immediately before the Relevant Transfer Date or Commencement Date as appropriate, was either:

- a) Participating or eligible to participate in a Public Sector Pension Scheme; or
- b) Participating or eligible to participate in a pension scheme Broadly Comparable to the Public Sector Pension Scheme; and in every case above where such employee is entitled to New Fair Deal or COSOP protection;

1.1.8. "LGPS" means the Local Government Pension Scheme as governed by the Local Government Pension Scheme Regulations 2013 (SI 2013/2356), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;

1.1.9. "LGPS Admission Agreement" means the admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013 (SI 2013/2356);

1.1.10. "THE PRIME CONTRACTOR'S Scheme" means the Prime Contractor's Broadly Comparable pension scheme referred to in paragraph 1.3.1.3 below, or a Broadly Comparable scheme that replaces it;

1.1.11. "Public Sector Pension Scheme" means:

- a) The Teachers Pension Scheme (TPS), and/or
- b) The LGPS, and/or
- c) The CSP Schemes, and/or
- d) Such other public sector pension scheme as ESFA may notify to the Prime Contractor.

1.2. Protection of Pensions – General

The Prime Contractor shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

1.3. Protection of Pensions – Former Public Sector Employees

1.3.1. THE PRIME CONTRACTOR shall:

- 1.3.1.1. In respect of all Former Public Sector Employees, ensure that from the Relevant Transfer Date or Commencement Date, they:
- 1.3.1.2. Participate in the relevant Public Sector Pension Scheme, and do all such things and execute such documents as may be required to enable participation including any Admission Agreement required to enable the Prime Contractor to be able to provide membership of, a Public Sector Pension Scheme, where permissible by the rules of that scheme or in accordance with New Fair Deal or COSOP, or
- 1.3.1.3. offer a pension scheme Broadly Comparable to the relevant Public Sector Pension Scheme (the "PRIME CONTRACTOR'S Scheme"), if participation in the relevant Public Sector Pension Scheme is not possible and/or ESFA has expressly agreed in writing to the use of the PRIME CONTRACTOR'S Scheme. Such PRIME CONTRACTOR'S Scheme must be capable of receiving a transfer payment in respect of past pensionable service on terms set by ESFA; or
- 1.3.1.4. Establish, or have become party to an employee's retirement benefit scheme that makes retirement provision which is accepted in writing by each individual Former Public Sector Employee as being adequate for their personal retirement provision.

1.3.2 Provision of information

1.3.2 The Prime Contractor undertakes to ESFA:

- 1.3.2.1. to provide all information which ESFA reasonably requires relating to matters referred to in this Pensions Annex as soon as reasonably practicably and in any event within 3 months of request by ESFA;
- 1.3.2.2. within 3 months of the Relevant Transfer Date or Commencement Date to provide to ESFA in respect of any Former Public Sector Employee whom the Prime Contractor considers is entitled to (i) NFD or COSOP pension protection and (ii) bulk transfer past pensionable service on preferential non statutory terms, all relevant information ESFA reasonable requires to assess such entitlements including without limitation (i) such employee's full

employment and pension history (ii) details of the pension schemes the employee participated in and why they participated, and (iii) the reasons the Prime Contractor considers such employee has such entitlements with any supporting evidence; and

- 1.3.2.3. not to issue any announcements to Former Public Sector Employees relating to any of the employees' pension entitlements referred to in paragraph 1.3.2.2 above, without ESFA's prior written consent, such consent not to be unreasonably withheld or delayed.

1.3.3 Admission of the Former Public Sector Employees into a Public Sector Pension Scheme

- 1.3.3.1. Where the option set out in 1.3.1.1. applies the Prime Contractor shall ensure that each Former Public Sector Employee may participate, or continue to participate in their respective Public Sector Pension Scheme.
- 1.3.3.2. The Prime Contractor shall comply with any direction from ESFA in respect of inviting those Former Public Sector Employees who (i) immediately before the Relevant Transfer Date or Commencement Date participated or were eligible to participate in a Former Prime Contractor's Scheme; and (ii) ESFA have confirmed in writing are both entitled to New Fair Deal or COSOP pension protection and are entitled to a bulk transfer of past pensionable service; and (iii) who elect to join a Public Sector Pension Scheme, to request that a payment is made from the Former Prime Contractor's Scheme to Public Sector Pension Scheme in respect of the retirement benefits accrued in the Former Prime Contractor's Scheme on behalf of those Former Public Sector Employees and further comply with any requirements necessary to effect such bulk transfer that ESFA reasonably requires;
- 1.3.3.3. Where the option set out in 1.3.1 applies and any Former Public Sector Employee participates, or continues to participate, in their respective Public Sector Pension Scheme, the Prime Contractor shall ensure that it pays such Public Sector Pension Scheme all such amounts as are due. The Prime Contractor shall be solely liable for all costs, contributions, payments and other amounts relating to participation in such Public Sector Pension

Scheme for the period of the Former Public Sector Employee(s) admission to such scheme(s) from the Relevant Transfer Date or Commencement Date to the Service Transfer Date and shall indemnify ESFA for any liability arising in respect of all such funding requirements.

Admission of the Former Public Sector Employees to THE PRIME CONTRACTOR'S Scheme

1.3.4.1 Where the Prime Contractor has set up a PRIME CONTRACTOR'S Scheme under 1.3.1.3 above, the Prime Contractor shall procure that the Former Public Sector Employees shall be automatically admitted to THE PRIME CONTRACTOR'S Scheme with effect from the Relevant Transfer Date or Commencement Date unless any of the Former Public Sector Employees elect within three (3) months of the Relevant Transfer Date or Commencement Date by notice in writing not to become members of THE PRIME CONTRACTOR'S Scheme from such date;

The Prime Contractor shall additionally:

- 1.3.4.2. Supply to ESFA details of its PRIME CONTRACTOR'S Scheme and provide a valid certificate of Broad Comparability covering all relevant Former Public Sector Employees;
- 1.3.4.3. fully fund any such Broadly Comparable pension scheme (which for the avoidance of doubt includes the PRIME CONTRACTOR'S Scheme) in accordance with the funding requirements set by THE PRIME CONTRACTOR'S Scheme Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
- 1.3.4.4. procure that an amendment shall only be made to THE PRIME CONTRACTOR'S Scheme which could reduce the value of the benefits of any Former Public Sector Employee which have accrued to the date upon which the power to amend is exercised, if any such amendment is required by legislation or is made with the written consent of the Former Public Sector Employee. The value of the benefits shall make explicit allowance for expected future salary growth as determined by the actuary of THE PRIME CONTRACTOR'S Scheme as if the Former Public Sector Employee had continued in employment with THE PRIME CONTRACTOR;
- 1.3.4.5. provide a replacement Broadly Comparable pension scheme with immediate effect for those Former Public Sector Employees who are still employed by

the Prime Contractor and are still eligible for New Fair Deal or COSOP protection in the event that the PRIME CONTRACTOR'S Scheme is terminated;

- 1.3.4.6. Comply with any direction from ESFA to invite those Former Public Sector Employees who (i) immediately before the Relevant Transfer Date or Commencement Date either participated or were eligible to participate in a Former Prime Contractor's Scheme or a Public Sector Pension Scheme; and (ii) ESFA have confirmed in writing are both entitled to New Fair Deal or COSOP pension protection and are entitled to a bulk transfer of past pensionable service;
- 1.3.4.7. and (iii) who elect to join THE PRIME CONTRACTOR's Scheme, to request that a payment is made from the Former Prime Contractor's Scheme to THE PRIME CONTRACTOR'S Scheme in respect of the retirement benefits accrued in the Former Prime Contractor's Scheme or Public Sector Pension Scheme (whichever is applicable) on behalf of those Former Public Sector Employees on the terms confirmed by ESFA pursuant to paragraph 1.3.4.8 below;
- 1.3.4.8. Procure that THE PRIME CONTRACTOR'S Scheme will accept a transfer value from either a Public Sector Pension Scheme or the Former Prime Contractor's Scheme on terms determined by ESFA;
- 1.3.4.9. Ensure that on a full or partial wind-up of THE PRIME CONTRACTOR'S Scheme, the benefits of any Former Public Sector Employee who is currently employed by THE PRIME CONTRACTOR and accruing benefits immediately before such winding up have been increased to those which could be provided by a 'past service reserve'. The 'past service reserve' is to be calculated in accordance with the provisions of Annex B of New Fair Deal and with regard to projected final pensionable pay at the earlier of (i) assumed date of retirement, or (ii) death, or (iii) leaving service, and not the final pensionable pay at the date of either (i) the winding-up of the pension scheme or (ii) ceasing to be an active participant in THE PRIME CONTRACTOR'S Scheme, and each reserve is to be calculated on a basis determined by the actuary of THE PRIME CONTRACTOR'S Scheme.

Pension provisions on exit

1.4 At the expiry or termination of this Contract, where Former Public Sector Employees participate in the PRIME CONTRACTOR'S Scheme THE PRIME CONTRACTOR shall:

1.4.1 instruct THE PRIME CONTRACTOR'S Scheme actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Prime Contractor and/or ESFA may reasonably require, to enable the Replacement Prime Contractor to participate in the appropriate Public Sector Pension Scheme in respect of any Former Public Sector Employee that remains eligible for New Fair Deal or COSOP protection following a Service Transfer; and

1.4.2 procure that THE PRIME CONTRACTOR'S Scheme shall offer members of THE PRIME CONTRACTOR'S Scheme who were Former Public Sector Employees and who remain eligible for New Fair Deal or COSOP protection following a Service Transfer to the Replacement Prime Contractor, the option to transfer their accrued pension rights to either the appropriate Public Sector Pension Scheme or any Broadly Comparable pension scheme set up by the Replacement Prime Contractor ("Successor Contractor's Scheme") on an actuarial basis certified by the actuary as no less favourable than the transfer value which applied at the start of this contract. If no such transfer value applied then in accordance with the provisions of Annex B of New Fair Deal the bulk transfer value offered should be based on a 'past service reserve' basis to be calculated allowing for projected final salary. The value of such accrued pension rights shall not be reduced because of inadequate funds being available in THE PRIME CONTRACTOR'S Scheme and the Prime Contractor shall ensure the full transfer value as calculated in accordance with this paragraph 1.4.2 is paid.

Sub-contractors

1.5 Where any Former Public Sector Employee transfers to a Sub-Contractor engaged in the provision of the Services, THE PRIME CONTRACTOR shall ensure that in any such transfer, the Sub-Contractor shall comply with the provisions of this Pensions Annex.

Former Prime Contractor becomes the Prime Contractor

1.6 For the avoidance of doubt, should the Former Prime Contractor become the Prime Contractor, the Prime Contractor shall comply with the provisions of this Pensions Annex from the Commencement Date.

Indemnity

- 1.7. The Prime Contractor undertakes to ESFA to indemnify and keep indemnified ESFA and any Replacement Prime Contractor on demand from and against all and any Losses whatsoever arising out of or in connection with service arising on and after the Relevant Transfer Date or Commencement Date which arise from a breach by the Prime Contractor or any Sub-contractor of this Pensions Annex.
- 1.8 The indemnities in this Pensions Annex shall survive the termination of this Contract.

ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS
-TO BE CONFIRMED-

SCHEDULE 3

Exit Management

1. Definitions

- 1.1. In this Schedule, where context admits, defined terms shall have the meaning given to them in Clause 1 of the Terms and Conditions.

2. Transfer of Responsibility on Expiry or Termination

- 2.1. Subject to Schedule 2 (Staff Transfer), the Parties agree that if upon termination of this Contract or any part of the Service being provided under the Contract, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 are applicable, the Parties shall in good faith co-operate with each other in the disclosure of information and the provision of other assistance so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties.
- 2.2. The Parties agree that on termination or expiry of this Contract for any reason, the continuity of the Services is of paramount importance. The Prime Contractor shall do its utmost to minimise disruption caused to Customers and to assist the implementation of any contingency plan proposed by the ESFA either prior to or after the termination or expiry of this Contract, to deal with the effects of such termination or expiry in so far as it is practicable to do so.
- 2.3. On termination or expiry of this Contract for any reason the Customer Files will become the property of the ESFA. The Prime Contractor shall allow the ESFA its servants or agent to have access to its premises to remove Customer Files or otherwise comply with a request by the ESFA to transfer Customer Files to any third party nominated by the ESFA.
- 2.4. The Prime Contractor shall, at no cost to the ESFA, promptly provide such assistance and comply with such timetable as the ESFA may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or their equivalent) upon the expiry or other termination of this Contract. The Prime Contractor shall use all reasonable endeavours to ensure that its employees and its Sub-Contractors are under a similar obligation. The ESFA shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Contract.
- 2.5. Such assistance may include, (without limitation) delivery of documents and data in the possession or control of the Prime Contractor or its sub-contractors, which relate to performance, monitoring, management and reporting of the

Programme, including the documents and data, if any, referred to in the Schedules.

- 2.6. The Prime Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the ESFA to ensure an orderly transfer of responsibility for provision of the Services.

SCHEDULE 4

ITT and Prime Contractor's response

The bid submitted on 26 March 2018 in Award and all its supporting documents forms part of the contract.

The Prime Contractor shall retain a copy of each document to verify Services.

Copies of these documents are available by zip file and provided to the Prime Contractor on 14 September 2018.

List of documents provided by ESFA:

1. Invitation to Tender (ITT)

List of documents provided by the Prime Contractor include:

1. **National Careers Service - Once Only Questionnaire – Prospects Services**
2. **National Careers Service - Bidding Area Questionnaire – West Midlands and Staffordshire – Prospects Services**
3. **Prospects Services - Customer Journey Diagram – West Midlands and Staffordshire – Prospects Services**
4. **Management and Delivery Structure – West Midlands and Staffordshire – Prospects Services**
5. **WM – 04 – Sub-Contractor Pro-Forma**
6. **11 – National Careers Service Volumes and Cost Pro forma – West Midlands and Staffordshire**
7. **Workforce Development Policy**
 - i. Workforce Development Policy – Prospects Services
8. **Business Continuity and Disaster Recovery Policies and Plans**
 - i. Business Continuity and Disaster Recovery Policy – Prospects Services
9. **Equality and Diversity Policy**
 - i. Equalities and Diversity Policy – Prospects Services
10. **Overall Security Policy**
 - i. 27001-13 (SOA) Information Security – Prospects Services
 - ii. Access Control Policy – Prospects Services
 - iii. Cyber Essentials Certificate – Prospects Services
 - iv. Encryption Policy – Prospects Services
 - v. Information Security Management System Manual – Prospects Services
 - vi. Information Security Policy – Prospects Services
 - vii. ISO 27001 Certificate – Prospects Services
 - viii. Mobile Data Security Policy – Prospects Services
11. **Quality Improvement Policy**
 - i. Quality Improvement Policy – Prospects Services

SCHEDULE 5
DECLARATION OF SUBCONTRACTORS 2018-2019

Legal entity name/s of the subcontractor/s as it appears on Companies House (if this is a college then the full college name needs to be detailed instead)	Registered Company / Charity Number (if applicable)	UKPRN	Value (£) of the subcontract	Agreed target of total customers for sub contract 2018-19	Agreed target of outcomes for sub contract 2018 - 2019			The dates at which the subcontracting is expected to start or started and end	
					Customer Satisfaction	Career Management	Jobs and Learning		
Job Change 2007	06410268	10044996	£496,775	4,200	3,778	3,150	2,956	01/10/18	31/03/19
Specialist Recruitment Services UK Limited	06495186	10028856	£118,320	1,200	1,082	901	481	01/10/18	31/03/19
Borough of Telford and Wrekin	N/A	10006547	£106,400	1,082	971	809	433	01/10/18	31/03/19
Phoenix Training Services (Midlands) Limited	04819289	10005094	£118,320	1,200	1,082	901	481	01/10/18	31/03/19
East Birmingham Community Forum Limited	02766929	10019812	£455,165	4,200	3,778	3,150	2,318	01/10/18	31/03/19
Ashley Community Housing Limited	06630015	10038201	£41,565	424	380	317	152	01/10/18	31/03/19
Integer Training Limited	03791017	10019300	£39,425	400	360	301	160	01/10/18	31/03/19
Stoke on Trent City Council	N/A	10001473	£40,380	409	368	308	164	01/10/18	31/03/19

*** This declaration forms part of the subcontractor declaration submitted 17/08/18

SCHEDULE 6

Maximum Contract Value and Target Customer Volumes

Maximum Contract Value

1. In this Schedule, where the context admits, defined terms shall have the meaning given to them in Clause 1 of the Terms and Conditions.
2. This Schedule sets out the Maximum Contract Value for the supply of the Services under the Contract from 1 October 2018 – 31 March 2019. Delivery against this Contract shall start on 1 October 2018. For the avoidance of doubt, the Prime Contractor may not seek to invoice the ESFA in respect of any services supplied prior to the Services Start Date of 1 October 2018.
3. The Maximum Contract Value in the Area for the period 1 October 2018 – 31 March 2019 is £2,815,792. The Maximum Contract Value must be allocated in accordance with the principles set out in the Funding Rules.
4. The Maximum Contract Value has been calculated to include inflation during the Contract Period and will not be increased to reflect inflationary rate rises during the Contract Period.
5. The Maximum Contract Value in the Area for the Contract Year starting on 01 April 2019, and for each subsequent anniversary thereof, shall be as notified by the ESFA to the Prime Contractor as soon as is practicable at the beginning of each calendar year, with final allocations confirmed at the beginning of May each year.
6. This Schedule supplements the obligations on the Prime Contractor in the Terms and Conditions and the Funding Rules.

Target Customer Volumes

7. The Target Customer Volumes are as follows:

Contract Year	Target Customer Volumes
01/10/18 - 31/03/19	28,765
01/04/19 - 31/03/20	TBC
01/04/20 - 31/03/21	TBC

SCHEDULE 7

Implementation Services

1. Definitions

In this Schedule 7 where the context admits:

Acceptance Criteria	Means the acceptance criteria in respect of each Milestone, as specified in Appendix 5.
Bonus	Means the bonus payment specified in Appendix 6.
Change Control Note	Means a note in the form set out in Appendix 3.
Implementation Plan	The plan developed and revised from time to time in accordance with this Schedule 7.
Key Milestone (KM)	A key milestone as set out in the Implementation Plan, being the milestone at which the Prime Contractor has demonstrated that the relevant part of the Implementation Services has been completed.
Services Commencement Date	In relation to the Services, the later of: (a) the date identified in the Implementation Plan upon which the Services are to commence; and (b) where the Implementation Plan states that the Prime Contractor must have Achieved Key Milestone 3 before it can commence the provision of the Services, the date upon which the Prime Contractor Achieves Key Milestone 3.
Services	means the Services described in the Contract.
Milestone	An event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date.
Milestone Date	The target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved.
Achieve	in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone by the ESFA.

	and “Achieved” and “Achievement” shall be construed accordingly
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2. Background

2.1. The Implementation Services are required to allow the Prime Contractor to start the supply of the Services on the Services Commencement Date. The Services are part of the wider National Careers Service that includes the National Careers Helpline, the web-based digital service and, connecting all of these to act as a single service, a data exchange service. In order to function as part of a wider National Careers Service, the transition has to include integration with the data exchange capability and this has to be coordinated across all participating organisations which comprise the National Careers Service.

3. Implementation Services

3.1. The Prime Contractor will provide the following **Implementation Services** during the Implementation Period:

- 3.1.1. Commercial: any partner or Sub-Contractor commercial arrangements to deliver the Services will be finalised and entered into early in the Implementation Period;
- 3.1.2. Staffing: A transition manager and any supporting team will be put in place to undertake the setting up of the Services;
- 3.1.3. A resource plan will be developed to enable recruitment of staff and specialist advisers in time to provide appropriate training;
- 3.1.4. Ways of working: plans will be developed prior to the Services Start Date to define suppliers ways of working and key contact personnel;
- 3.1.5. Staff Transfer arrangements (where applicable): the Prime Contractor will commence Staff Transfer arrangements immediately after Contract award. This will be reviewed and monitored by the ESFA during the Implementation Period;
- 3.1.6. Facilities: the locations and equipment needed to provide the Services will be put in place in time for staff to undertake the training necessary to support the Services;
- 3.1.7. Infrastructure: network connections and telephone services will be established;
- 3.1.8. Knowledge base: the capability to transition knowledge and best practice from previous service providers and update it for the new operating model and procedures will be put in place to support training, including any staff who may transition under TUPE;
- 3.1.9. Data: A data dictionary to support operational handovers, reporting and customer journeys across the wider service will be issued prior to contract award. This will be incorporated into the Prime Contractor’s own data handling and management process. Appropriate data protection controls will be put in place. Plans for migrating data from outgoing service providers will also be put in place and the Prime Contractor will work with outgoing contractors to transfer operational services as required;

- 3.1.10. Processes: The business and operating processes for providing the Services will be put in place to support staff training;
- 3.1.11. Systems: The systems needed to support the Services will to be developed/configured to support the staff delivering the service, align to the business processes established and manage the data being collected and used;
- 3.1.12. Cooperation: the Prime Contractor will liaise and cooperate with outgoing contractors as required in order to ensure a smooth transition of the Services.

4. Implementation Plans

- 4.1. The Prime Contractor shall appoint an Implementation manager who will act as the main point of contact with the ESFA's Implementation Manager and the Implementation Managers for other service providers within the National Careers Service.
- 4.2. The Implementation Plan which will set out how the Prime Contractor will provide the Implementation Services to ensure that all measures are in place for the Services to start on the Services Start Date.
- 4.3. The Parties shall comply with the provisions of Appendix 1.1 to Schedule 4 (Implementation Plan) in relation to the agreement and maintenance of the Implementation Plan.
- 4.4. The Prime Contractor shall:
 - 4.4.1. comply with the Implementation Plan; and
 - 4.4.2. ensure that each Milestone is Achieved on or before its Milestone Date.
- 4.5. If the Prime Contractor becomes aware that there is, or there is reasonably likely to be, a delay to the Completion of any Milestone it shall notify ESFA within 5 days setting out how it intends to address the impact of the delay or anticipated delay.
- 4.6. The Prime Contractor shall use all reasonable endeavours to eliminate or mitigate the consequences of any delay or anticipated delay.

5. Achievement of Milestones and payment

- 5.1. The Parties shall carry out appropriate testing to determine whether a Milestone has been Achieved.
- 5.2. Where a Milestone has been Achieved, the ESFA shall issue to the Prime Contractor a Milestone Achievement Certificate substantially in the form set out in Appendix 4.
- 5.3. Where a Milestone has been Achieved by the relevant Milestone Completion Date, the ESFA shall make payment to the Prime Contractor of a bonus in the amount set out in the table set out in Appendix 6 (the "**Bonus**").
- 5.4. Where the Prime Contractor does not achieve a Milestone by the relevant Milestone Completion Date, and in the ESFA's view there are mitigating

circumstances for this failure, the ESFA may, at its discretion, giving brief reasons only, make payment of all or part of the Bonus to the Prime Contractor.

Appendix 1

IMPLEMENTATION PLAN

1. INTRODUCTION

- 1.1. This Appendix:
- (a) defines the process for the preparation and implementation of the Outline Implementation Plan and Implementation Plan; and
 - (b) identifies the Milestones which are required to be Achieved as part of the Implementation Services.

2. OUTLINE IMPLEMENTATION PLAN

- 2.1. The Outline Implementation Plan is set out in Appendix 2.
- 2.2. All changes to the Outline Implementation Plan shall be subject to agreement in writing between the parties and shall be recorded in a Change Control Note signed by both parties before being effective.

3. APPROVAL OF THE IMPLEMENTATION PLAN

- 3.1. The Prime Contractor shall submit a draft of the Implementation Plan to the ESFA for approval within 10 Working Days of the Effective Date.
- 3.2. The Prime Contractor shall ensure that the draft Implementation Plan:
- (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
 - (b) includes (as a minimum) the Prime Contractor's proposed timescales in respect of the following for each of the Key Milestones:
 - (i) Systems, facilities and infrastructure in place and working (KM1);
 - (ii) Integration testing completed successfully (KM2); and
 - (iii) All operational readiness complete and services ready to go live (KM3).
 - (iv) Post live successful running of the Services with all remedial actions identified by the ESFA at KM3 having been completed.
 - (c) clearly outlines all the steps required to implement the Milestones in conformity with the ESFA's requirements; and
 - (d) clearly outlines the required roles and responsibilities of the Prime Contractor, and any dependencies on the ESFA, including (in both cases) staffing requirements.
- 3.3. Prior to the submission of the draft Implementation Plan to the ESFA in accordance with Paragraph 3.1, the ESFA shall have the right:

- (a) to review any documentation produced by the Prime Contractor in relation to the development of the Implementation Plan, including:
 - (i) details of the Prime Contractor's intended approach to the Implementation Plan and its development;
 - (ii) copies of any drafts of the Implementation Plan produced by the Prime Contractor; and
 - (iii) any other work in progress in relation to the Implementation Plan; and
 - (b) to require the Prime Contractor to include any reasonable changes or provisions in the Implementation Plan.
- 3.4. Following receipt of the draft Implementation Plan from the Prime Contractor, the ESFA shall:
 - (a) review and comment on the draft Implementation Plan as soon as reasonably practicable; and
 - (b) notify the Prime Contractor in writing that it approves or rejects the draft Implementation Plan no later than 20 Working Days after the date on which the draft Implementation Plan is first delivered to the ESFA.
- 3.5. If the ESFA rejects the draft Implementation Plan:
 - (a) the ESFA shall inform the Prime Contractor in writing of its reasons for its rejection; and
 - (b) the Prime Contractor shall then revise the draft Implementation Plan (taking reasonable account of the ESFA's comments) and shall re-submit a revised draft Implementation Plan to the ESFA for the ESFA's approval within 10 Working Days of the date of the ESFA's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Implementation Plan.
- 3.6. If the ESFA approves the draft Implementation Plan, it shall replace the Outline Implementation Plan from the date of the ESFA's notice of approval.
- 3.7. Save for any amendments which are of a type identified and notified by the ESFA (at the ESFA's discretion) to the Prime Contractor in writing as not requiring approval, any amendments to the Implementation Plan shall be subject to agreement in writing signed by both parties as a Change Control Note

Appendix 2

OUTLINE IMPLEMENTATION PLAN

The Final Implementation Plan submitted and all its supporting documents forms part of the contract.

The Prime Contractor shall retain a copy of each document to verify Services.

List of documents supplied by the Prime Contractor include:

1. NCS – Outline Implementation Plan Pro forma – Prospects Services
2. LOT 8 – West Midlands – Prospects – Outline Implementation Plan
3. Detailed Implementation Plan – Prospects – West Midlands

Copies of these documents are available by zip file and provided to the Prime Contractor on 14 September 2018.

Milestone	Deliverables (<i>bulleted list showing all Deliverables (and associated tasks) required for each Milestone</i>)	Duration (<i>Working Days</i>)	Milestone Date	ESFA Responsibilities (<i>if applicable</i>)
Key Milestone 1	Systems, facilities and infrastructure services in place		31/08/2018	
Key Milestone 2	Integration testing with future data sharing service complete and contingency data extracts produced		17/09/2018	
Key Milestone 3	Operational readiness to go live confirmed		01/10/2018	
Key Milestone 4	All remedial work completed and no high priority fails in first two months		01/12/2018	

Appendix 3

Change Control Note

CR NO.:	TITLE:	DATE RAISED:
		REQUIRED BY DATE:
DESCRIPTION OF CHANGE		
REASON FOR CHANGE:		
SIGNED ON BEHALF OF THE ESFA:	SIGNED ON BEHALF OF THE SUPPLIER:	
Signature: _____	Signature: _____	
Name: _____	Name: _____	
Position: _____	Position: _____	
Date: _____	Date: _____	

Appendix 4

Milestone Acceptance Certificate

To: PROSPECTS SERVICES

FROM: ESFA

[**Date**]

Dear Sirs,

MILESTONE ACCEPTANCE CERTIFICATE

Milestone [KM1 / KM2 / KM3 / KM4]

We refer to the agreement (the “**Agreement**”) relating to the provision of the Services between the Education and Skills Funding Agency (the “**ESFA**”) and Prospects Services (the “**Prime Contractor**”) dated [**date**].

Capitalised terms used in this Certificate have the meanings given to them in the Contract.

We confirm that the Milestones listed above have been Achieved successfully in accordance with the Contract.

Yours faithfully

Joe Billington

Deputy Director of Customer Engagement

acting on behalf of Eileen Milner, Chief Executive of the Education & Skills Funding Agency

Appendix 5

Milestones and Acceptance Criteria

Acceptance Criteria to be Achieved in order to Achieve the Key Milestones:

Milestone	Test*	Test Success Criteria
Key Milestone 1 (KM1)	1. All systems are in place and have passed system, user and operational tests 2. All facilities are in place and ready for use. 3. All infrastructure services and equipment is in place and ready for use.	1. All systems are in place, have been tested and the aggregate remaining defects comply with the following criteria: No severity 1 defects; No more than one severity 2 defect for which the impact can be accommodated; no more than three severity 3 defects. 2. The facilities to be used for delivering the service are in place, accessible and ready to use. All safety certificates / compliance documentation for use of facilities is in place. Where customers are to be on-site, the signage and decoration is in place ready for customer access. Appropriate furnishing and seating for service delivery is in place. 3. All services, including communications services are in place, tested and working. Advisers should be able to access the systems and an necessary digital tools and products to enable them to deliver careers advice and information.
Key Milestone 2 (KM2)	1. Integration testing with the future data sharing service is complete 2. Data extracts to DC have been submitted for validation and testing and passed	1. Testing with Future Data Sharing service test stub completed successfully (no severity 1 defects, no severity 2 defects, up to 3 severity 3 defects); Testing with Future data sharing service test service completed successfully (no severity 1 defects, no severity 2 defects, up to 3 severity 3 defects); Successful integration testing reported by Future Data Sharing services team. 2. Data extract successfully submitted, passed validation checks and successful outcome reported by Data Collections team
Key Milestone 3 (KM3)	1. Operational readiness	1. Essential operational readiness criteria are met and this is evidenced and confirmed by Authority Service

	confirmed as complete	Implementation Manager and approved by Authority governance board. This may be a conditional acceptance that is subject to remedial actions. These have to be completed within agreed timescales
Key Milestone 4 (KM4)	1. No high priority fails in first two months live service 2. All remedial work completed	1. No P1 problems during first two months and no P2 problems lasting more than 24 hours. 2. If KM3 was achieved conditionally on specific remedial actions being taken, then those actions have been completed and accepted by the Authority

* Note: The Pre-Conditions are that e.g. the Success Criteria for the previous Key Milestone must be satisfied before next Key Milestone tests are commenced.

Appendix 6

Bonus

Milestone	Bonus (GBP Sterling)
KM1	7,500
KM2	7,500
KM3	7,500
KM4	7,500

SCHEDULE 8

Processing, Personal Data and Data Subjects

1. The Prime Contractor shall comply with any further written instructions with respect to processing by the ESFA.
2. Any such further instructions shall be incorporated into this Schedule.
3. In this Schedule, where the context admits, defined terms shall have the meaning given to them in Clause 1 of the Terms and Conditions.

Description	Details
Subject matter of the processing	Individuals seeking information, advice and guidance from the National Careers Service
Duration of the processing	From Commencement Date until the Expiry Date
Nature and purposes of the processing	Collection Recording Organisation Structuring Storage Use Disclosure by transmission Dissemination Combination Erasure Retrieval Consultation In order for the following purposes: To provide personalised careers advice to Customers Creation of Customer Files Recording of Outcomes against Customer Files Verification of claimed identity Provision of claims for funding Provision of business and management information To support audit activities
Type of Personal Data	Only as set out in the National Careers Service Data Dictionary, data collection specification or that agreed with the

	Prime Contractor, which may be amended from time to time,
Categories of Data Subject	Customers of Prime Contractors delivering the National Careers Service
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	6 years from the end of the financial year in which the last payment is made, after which the data must be destroyed in accordance with the arrangements described in paragraph 20.12 unless notified otherwise in writing by the ESFA.

SCHEDULE 9

The Shaw Trust Group Limited

- and -

The Education and Skills Funding Agency

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the first day of October 2018.

BETWEEN:

- (1) **The Shaw Trust Group** a company incorporated in England and Wales with number 01744121 whose registered office is at Third Floor, 10 Victoria Street, Bristol, England, BS1 6BN a company incorporated under the laws of The United Kingdom, registered in The United Kingdom with number 01744121 at Companies House, whose principal office is at Third Floor, 10 Victoria Street, Bristol, England, BS1 6BN ("**Guarantor**"); in favour of
- (2) The Education and Skills Funding Agency, an Executive Agency of the Department for Education whose principal office is at Cheylesmore House, Quinton Road, Coventry, CV1 2WT ("**Beneficiary**")

WHEREAS:

- (A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Prime Contractor, to guarantee all of the Prime Contractor's obligations under the Guaranteed Agreement.
- (C) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1 Definitions and Interpretation

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:
 - (a) "**Insolvency Event**" has the meaning given in the Guaranteed Agreement;
 - (b) "**Guaranteed Agreement**" means the National Careers Service Contract made between the Beneficiary and the Prime Contractor on 1 October 2018;
 - (c) "**Guaranteed Obligations**" means all obligations and liabilities of the Prime Contractor to the Beneficiary under the Guaranteed Agreement

together with all obligations owed by the Prime Contractor to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;

(d) **“Prime Contractor”** means **Prospects Services** a company incorporated in England and Wales with number 03042176 whose registered office is at Prospects House, 19 Elmfield Road, Bromley, Kent, BR1 1LT a company incorporated under the laws of The United Kingdom, registered in The United Kingdom with number 03042176 at Companies House, whose principal office is at 19 Elmfield Road, Bromley, Kent, BR1 1LT; and

(e) **“Prime Contractor Default”** means any act or omission (or series of acts or omissions by the Prime Contractor) which would entitle the Beneficiary to terminate the Guaranteed Agreement in accordance with Clause 26.1 of the Guaranteed Agreement.

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent,

present or future.

2 Guarantee and indemnity

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Prime Contractor duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Prime Contractor to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Prime Contractor to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Prime Contractor shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - (a) fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
 - (b) as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Prime Contractor to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Prime Contractor under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Prime Contractor's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

- 2.5 The indemnities set out in this Clause 2 are subject to the provisions of Clause 11.

3 Obligation to enter into a new contract

- 3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Prime Contractor, or if the Guaranteed Agreement is disclaimed by a liquidator of the Prime Contractor or the obligations of the Prime Contractor are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4 Demands and Notices

- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

- (a) Third Floor, 10 Victoria Street, Bristol, England, BS1 6BN
- (b) 0208 789 9004
- (c) For the Attention of David Phipps

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

- (a) if delivered by hand, at the time of delivery; or
- (b) if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
- (c) if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

- 4.4 Any notice purported to be served on the Beneficiary under this Deed of

Guarantee shall only be valid when received in writing by the Beneficiary.

5 Beneficiary's protections

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Prime Contractor and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- (a) it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Prime Contractor of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
 - (b) it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Prime Contractor, the Beneficiary, the Guarantor or any other person;
 - (c) if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Prime Contractor for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
 - (d) the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Prime Contractor of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Prime Contractor or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Prime Contractor or any third party, or to take any action whatsoever against the Prime Contractor or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6 Guarantor intent

- 6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7 Rights of subrogation

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Prime Contractor and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
- (a) of subrogation and indemnity;
 - (b) to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Prime Contractor's obligations; and

(c) to prove in the liquidation or insolvency of the Prime Contractor,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Prime Contractor (other than cross-indemnities or other security taken in the ordinary course of its financial arrangements with its Affiliates) and agrees not to do take any further security until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8 Deferral of rights

8.1 Until all amounts which may be or become payable by the Prime Contractor under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

- (a) claim any contribution from any other guarantor of the Prime Contractor's obligations under the Guaranteed Agreement; or
- (b) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.

8.2 Until all amounts which may be or become payable by the Prime Contractor under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not following the occurrence of a Financial Distress Event or Prime Contractor Default:

- (a) exercise any rights it may have to be indemnified by the Prime Contractor;
- (b) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Prime Contractor; or
- (c) claim any set-off or counterclaim against the Prime Contractor.

8.3 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9 Representations and warranties

The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 9.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10 Payments and set-off

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date

of actual payment, whether before or after judgment.

- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11 Limit of the Guarantor's Liability

- 11.1 The liability of the Guarantor in respect of each claim made by the Beneficiary under an indemnity set out in this Deed shall not exceed the Cap (the "**Cap**"). For these purposes the Cap in relation to each indemnity claim made under this Deed shall be a sum equal to the Relevant Percentage (as defined below) of the total amount paid or payable to the Beneficiary in respect of the relevant claim (whether paid or payable under this Deed or otherwise and whether paid or payable by the Guarantor or by a third party). The Relevant Percentage is the percentage shareholding of the Guarantor in the Prime Contractor as at the date the event or first event in a series of events giving rise to the claim took place.

12 Guarantor's acknowledgement

- 12.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

13 Assignment

- 13.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 13.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

14 Severance

- 14.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

15 Third party rights

- 15.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person

which exists or is available otherwise than pursuant to that Act.

16 Governing Law

- 16.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 16.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 16.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 16.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by

Director:*[Insert/print name]*

Signature:

Director/Secretary: *[Insert/print name]*

Signature: