



Department  
for Education

**Contract for  
Ultima Skills Ltd  
Con\_17876**

**Partial pathway completion support**

**This contract is made on 19th January 2023 between**

- 1 **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DFE**"); and
- 2 Ultima Skills Ltd registered in England and Wales under 7646585 whose registered office is at Enterprise House, Seaman Way, Wigan, WN2 2LE (the "**Contractor**")

each a "**Party**" and together the "**Parties**".

**It is agreed that:**

1. this contract, together with the attached schedules and annexes, collectively form the "**Contract**"; and
2. if there is a conflict between the provisions of the clauses of the Contract and the provisions of the schedules, the following order of precedence shall apply:
  - (a) schedule 2 (Terms and Conditions);
  - (b) schedule 1 (Specification);
  - (c) schedules 3 to 7; and
  - (d) schedule 9 (Contractor's Quotation).

**This Contract has been executed on the date stated at the beginning of this page.**

**SIGNED by the CONTRACTOR acting by**


**Name of authorised signatory:** 

**Position:** Director

**Address:** Enterprise House, Seaman Way, Wigan, WN2 2LE

**Date:** Jan 20, 2023

**SIGNED by DFE acting by**


**Name of authorised signatory:** 

**Position:** Commercial Lead - Category Manager

**Address:** Sanctuary Buildings, 20, Great Smith Street, London SW1P 3BT

**Date:** Jan 20, 2023

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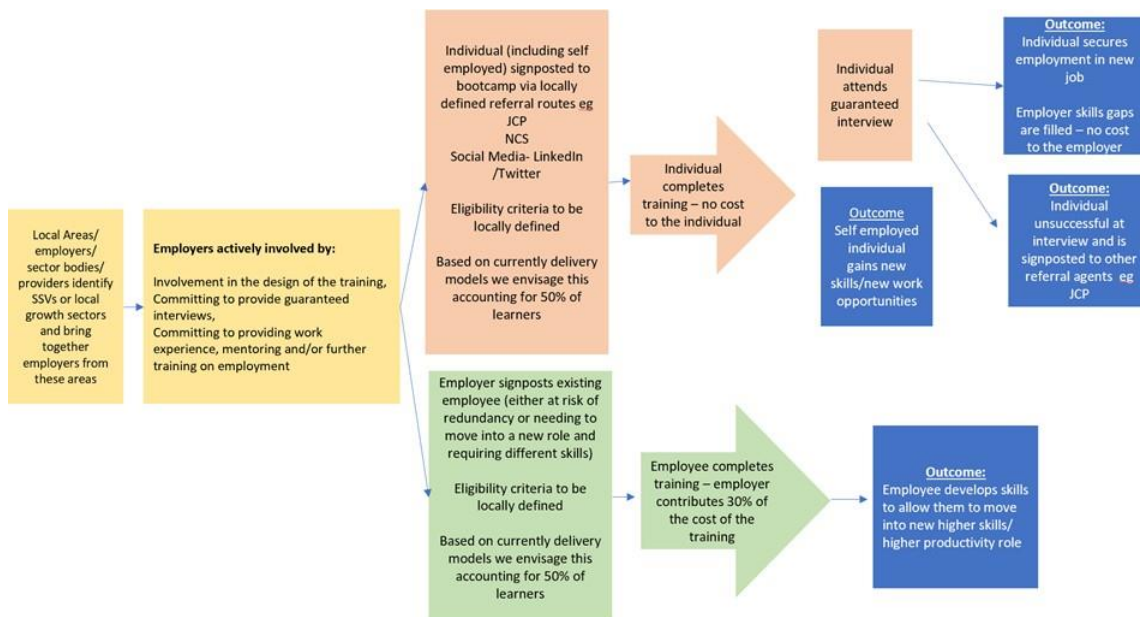
Schedule 1	<b>Specification</b>
Schedule 2	<b>Terms and Conditions</b>
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## Skills Bootcamps in HGV Driving – Service Requirements for System Group Learners

### Background to Skills Bootcamps

1. Skills Bootcamps aim to secure benefits for adults by giving them access to in-demand skills training and a guaranteed interview for a more sustainable, higher-skilled job and higher wages over time. The benefits for employers include helping them fill specific skills shortage vacancies (including in the HGV sector) enabling them to become more productive, more quickly.
2. The overall aims of the Skills Bootcamps in HGV Driving are:
  - to deliver \*flexible training programmes lasting up to 16 weeks, We recognise this may take longer in some instances for learners on pathways A & B which are for novice drivers but participants for this contract must have completed up to Milestone 3 for Pathways A & B and Milestone 2 for Pathway D (pass all relevant tests and be offered a job interview) by 30<sup>th</sup> June 2023.
  - Upon successful completion of training, an offer of a HGV driving role at the category for which they have been trained the course for new recruits or a new role for existing employees or new opportunities for the self-employed. *\*enabling adults to do training around work, looking for work or other responsibilities*

### Overview of the Skills Bootcamps Delivery Model



## Overview of the Service Requirements:

3. The DFE has contracted with the Contractor to provide partial pathway completion support for Learners (as defined below) to complete the Skills Bootcamps in HGV Driving (the "Training").

4. DFE previously contracted with System Group Limited (the "Previous Provider") who began providing the Training to learners. DFE's contract with the Previous Provider terminated prior to completion of the Training and, therefore, there are a number of learners who have begun but not yet completed their Training ("Learners"). To ensure such Learners complete the Training, DFE has entered into this Contract with the Contractor, who will provide the remainder of the Training to Learners in accordance with the terms of this Contract.

## Signing up:

5. DFE has contacted all Learners and will provide them with a list of approved providers ("Completion Support Providers") to continue providing Training to such Learners to completion (the "List"). The Learners may choose a provider from the List. Learners will be encouraged to sign up with their existing training delivery provider if such provider is on the List. Learners will have a period of weeks after receiving the List to sign up to an approved Completion Support Provider. You must not sign-up learners at a date from which there is not enough time to complete their training, pass their test and receive an offer of a job interview before the 30<sup>th</sup> of June 2023. Learners who cannot reach this point by 30<sup>th</sup> June 2023 will no longer be eligible to receive funding to complete the Training programme.

6. Upon receiving notification that a Learner would like to sign up to the Contractor to complete their Training, the Contractor will be responsible for ensuring that such Learner meets the criteria of "**Eligible Learner**" as follows:

- (a) the Learner was enrolled as a learner of the Previous Provider for the Training;
- (b) the Learner has achieved Milestone 1 (as set out below) as a minimum, but has not yet completed their Training;
- (c) the Learner has not signed up to another Completion Support Provider from the List; and
- (d) the Learner has signed up for Training with the Contractor at date that allows successful completion of training, pass their test, and receive an offer of a job interview before the 30<sup>th</sup> of June 2023.

7. The Contractor will provide Training to Eligible Learners only. Before the Contractor accepts a learner, the Contractor will need to confirm eligibility with the DFE. The Contractor will submit regular submissions to DFE with details of applicants which the Contractor has checked meets the criteria of 'Eligible Learner'. These submissions need to include the name; National Insurance number and email address of the applicant. The Contractor will share the submission via Galaxkey (data sharing portal) using the template provided by the DFE. DFE will keep a list of Learners who remain to be allocated a Completion Support Provider and cross check Contractor reports against such list. Contractors will be notified within 48 hours if any names submitted are found not to be Eligible Learners.

8. This training is for:

- Individuals who have little or no prior experience (all participants must have a full UK car driving licence), to support them through the Skills Bootcamp in HGV Driving and into jobs in the industry \*
- Qualified HGV drivers who require additional in demand HGV qualifications, those wishing to upgrade from Cat C to Cat C+E or those returning to the HGV profession.
- For the purposes of this contract only the learners are those who had already started on a Skills Bootcamp in HGV Driving with System Group Ltd.

- Those learners who already had practical training and a test booked but which has been cancelled due to the administration of System Group should be prioritised for new practical training and tests.
9. Skills Bootcamps are a new approach for this type of training, an end-to-end service includes the following components:
- Learner engagement and wraparound support to achieve positive outcomes at interview.
  - Employer engagement including securing an interview with an employer with relevant vacancies (where training is designed to lead to a new role in an organisation)
  - Medical test and provisional licence
  - Theory, hazard perception and case studies training and official tests (including 1 re-sit of tests where required)
  - Industry specific knowledge training
  - Practical driving training and practice (aiming to pass first time rather than standard hours)
  - Official practical driving tests (including 1 re-sit if required at no additional cost to DfE or the learner)
  - CPC training and certification
  - Full Cat C and/or Cat C and Cat C+E licences, ADR and PDP Qualifications where applicable depending on the Pathway.
10. You should supply high quality advice, guidance and support for learners through their training and whilst securing employment.
11. Suppliers must take an individual with little or no experience through every necessary stage until they have their full Cat C or Cat C and C+E licence and an interview with an employer with Cat C or Cat C+E driver vacancies.
12. Employers must co-fund the training with a 30% cash contribution where they are training existing employees. The Skills Bootcamp should be free to the employee. As this contract relates to learners who are already part way through their training, you must ensure you check the payment status of the employer contribution with your DfE contract manager, as the employer contribution may have already been paid to the previous provider. Where the employer has already paid their contribution to the previous provider, DfE will pay 100% of your quoted cost.
13. Participants with no employer support (unemployed, returning to work, self-employed, or those currently employed outside of the haulage industry wanting to change career) will be fully funded.
14. In summary, each Skills Bootcamp learner must be able to work as a fully qualified/licenced HGV driver with any additional HGV qualifications where relevant by the end of the Skills Bootcamp, ready for their interview with an employer.

#### Payment Mechanism:

	Pathway A	Pathway B
	Novice to CAT C	Novice to CAT C then CAT C+E
<b>Payment Milestone 1:</b> Learner Journey Start - 25% Payment	20 Guided Learning Hours/20% of GLH Complete (whichever comes first)	20 Guided Learning Hours/20% of GLH Complete (whichever comes first)
<b>Payment Milestone 2:</b> Mid-Training Payment - 35% Payment	Completion of Theory Training	Completion of Theory Training
<b>Payment Milestone 3:</b> Training and Test/Assessment Completion - 25% Payment	Successfully Passed Practical Test and Evidence of a CAT C Job Interview	Successfully Passed Practical Test and Evidence of a CAT C+E Job Interview
<b>Payment Milestone 4:</b> Evidence of a Job Offer - 15% Payment	Evidence of a CAT C Job Offer (or commencement of new role if existing employee)	Evidence of a CAT C+E Job Offer (or commencement of new role if existing employee)

	Pathway D
	Existing CAT C upgrade to CAT C+E
<b>Payment Milestone 1:</b> Learner Journey Start - 20% Payment	Learner has provided necessary paperwork & booked onto the course & Complete Day 1 of Training
<b>Payment Milestone 2:</b> Mid-Payment - 65% Payment	Successfully Passed Practical Test and Evidence of a CAT C+E Job Interview
<b>Payment Milestone 3:</b> Training and Test/Assessment Completion - 15% Payment	Evidence of a CAT C+E Job Offer (or commencement of new role if existing employee)

15. The above shows how the training in **the original contracts** were broken down and the original Milestone Payments. An explanation of the elements of the Milestones is shown below, along with the remaining services required to enable learner to complete.

16. Sampling will be done throughout the contract period to verify evidence to support the above e.g., learner registration records, accreditation, certification or digital reporting records, copies of work contracts etc. In cases where irregularities are identified, the Department reserves the right to carry out further checks and other remedial action to be defined at contract stage.

17. **It is your responsibility to ensure that you price for all cost elements that you will incur as part of your bid. You will be evaluated on the overall costs shown in your Price Submission Template and any contract awarded will be on the basis for that cost.**

18. A table of new proposed Milestone Payments is shown at the bottom of this document **(NB: all Learners have currently achieved Milestone 1 as a minimum, some have achieved Milestone 2, some have achieved Milestone 3).**

### **Training**

19. There are three training pathways and each pathway contains milestones which the Contractor must achieve for each Eligible Learner.

20. All Eligible Learners have completed Milestone 1, regardless of which pathway they are on and for the avoidance of doubt, the Contractor will not be required to provide Milestone 1 Training for any Eligible Learner on any pathway.

**The pathways are as follows:**

### **Pathways A and B**

21. **Learners at Milestone 1** – Have been recruited, had medicals, so far received 20 hours (or 20% of total) of driver training – This means to reach conclusion to Milestone 4 they need to complete their theory training, complete further practical training, pass their practical driving test, have an interview for a job and been placed into a job at the driving category they have been trained for.

22. **Learners at Milestone 2** – Have been recruited, had medicals, so far received 20 hours (or 20% of total) of driver training and completed their theory training - This means to reach conclusion to Milestone 4 they need to complete further practical training, pass their practical driving test, have an interview for a job and been placed into a job at the driving category they have been trained for.

23. **Learners at Milestone 3** – Have been recruited, had medicals, so far received all of their practical driver training and completed their theory training, passed their driving test and have had an interview (or promise of an interview) for a job - This means to reach conclusion to Milestone 4 they need to be placed into a job at the driving category they have been trained for.

### **Pathway D**

24. **Learners at Milestone 1** – Have completed all pre-requisite paperwork, enrolled and completed Day 1 of driver training – This means to reach conclusion to Milestone 3 they need to

complete further practical training, pass their practical driving test, have an interview for a job and been placed into a job at the driving category they have been trained for.

25. **Learners at Milestone 2** – Have completed all training, passed their driving test, and have had an interview (or promise of an interview) for a job - This means to reach conclusion to Milestone 3 they need to be placed into a job at the driving category they have been trained for.

#### **Payment Milestones for these Services**

26. Payment in respect of the services delivered at your quoted prices will be made on achievement of the milestones in the tables below, upon supply of satisfactory evidence:

#### **Pathways A and B**

Stage	Pathways A and B Milestone 1 to 4	Pathways A and B Milestone 2 to 4	Pathways A and B Milestone 3 to 4
Milestone 2	45%		
Milestone 3	35%	75%	
Milestone 4	20%	25%	100%

#### **Pathway D**

Stage	Pathway D Milestone 1 to 3	Pathway D Milestone 2 to 3
Milestone 2	75%	
Milestone 3	25%	100%

#### **Evaluation, Research and Data Collection**

27. The evaluation of this initiative is vital to development of the National Skills Fund. **All participating organisations and individuals** must commit to participate in research and evaluation by providing data and allowing their data to be processed and analysed for this purpose. The Department will provide an Excel template for manual completion.

28. Data collection, storage and retrieval must be compliant with the requirements of General Data Protection Regulations (GDPR) - <https://www.gov.uk/government/publications/guide-to-the-general-data-protection-regulation>.

29. Suppliers(s) and their delivery partners will be required to collect data for submission to the Department at defined intervals. **A specific data spreadsheet will be provided for this purpose.**

30. This includes specified information on:

- learners who have successfully completed training and have a guaranteed interview with an employer
- specified information on learner dropout numbers
- characteristics of learners and applicants (demographic data, previous education levels)
- outcome data on learners including rates of success at interview

- rates of learners moving into new job with a new employer, or change of role for existing employees, or, for the self-employed, new opportunities within 6 months of successful completion of Skills Bootcamp training
- specified information on SME participation including type and extent of co-investment from employers and employer contact information.

### **Key Performance Indicators (KPIs)**

31. These KPIs are to measure and monitor the supplier's conduct against the contract as a whole, they are not directly linked to Payment Milestones for individual learners

32. The Supplier shall monitor its own performance and that of its sub-contractors against the Key Performance Indicators outlined in the table below.

<b>KPIs</b>		
<b>New Skills</b>	Learners who successfully complete the Skills Bootcamp will have acquired new or refreshed skills in HGV Driving.	<b>100%</b>
<b>Guaranteed Interview</b>	Interview must be for a HGV Driving job that matches the new or refreshed skills acquired through the Skills Bootcamp on successful completion of the course and driving qualification	<b>100%</b>
<b>Career Progression</b>	Unemployed learners/independent employed learners: Should get an HGV Driving job within 6 months of completion.	<b>75%</b>
	Current employees being supported by their employers: Should get an HGV Driving job or new role within 6 months of completion.	
<b>Learner Drop-Out Rates</b>	Robust recruitment and learner support processes must be in place to minimise learner drop-outs.	<b>&lt;= 30%</b>
<b>Employer Co-Funding</b>	Where they are training their own existing employees, all employers must co-fund the training with a cash contribution. This should be 30% of course costs for large employers and 10% for SMEs.	<b>=/&gt; 30% of Skills Bootcamp Cost</b>

Service Levels	
<b>Employer Engagement</b>	Employers using the Skills Bootcamps to recruit new employees should be contributing in-kind to the delivery. Suppliers are expected to record and report on levels of in kind contributions through their data returns.
<b>Recruitment &amp; Enrolment</b>	All training must be delivered flexibly to allow people currently in work, looking for work or with other responsibilities to participate.
	The Supplier must issue a Privacy notice to learners to support delivery of future evaluation activity. This will be reviewed as part of the contract monitoring.
<b>Subcontracting</b>	Lead Suppliers must have a written contract with their subcontractor. It must set out the respective responsibilities of both the institution and the subcontractor. The contract must entitle the institution to exercise management controls over the subcontractor's activity including access for representatives of either the institution or the funding body for audit and assurance purposes.
	The Department recognises that arrangements in relation to sub-contracting may be subject to future change and may not be finalised until a later date. If the proposed supply chain changes at any time after submission of its response to the ITT, the Lead Supplier should inform the Department immediately. The Department reserves the right to reject sub contractors for any reason.

33. The Supplier will capture and retain evidence for contractual and performance purposes.
34. Management information shall be provided by the Supplier at defined intervals linked to payment triggers. The Department reserves the right to amend the frequency of reporting. The Supplier shall complete the data submission sheet along with a completed Contract Management Plan. Examples are attached and the full process will be explained by your contract manager.
35. The Supplier will be required to act in a flexible, responsive, and timely manner to provide the requested data and management information within reasonable timescales specified by the Department without additional cost to the Department.

36. The Department may amend/supplement the Supplier Performance Management Information it requires at any time including not limited to amendments to cover the Supplier's organisational structures/mechanisms for delivery of the Services.

37. The Department reserves the right to validate the Supplier Performance Management Information, reports or claims made in reports, in whole or in part, independently or directly with providers, participants, learners and/or partners.

38. The Supplier will attend monthly performance review meetings with the Department and will be required to present relevant/requested Supplier Management Information. Supplier Performance Management Information should be submitted to the Department 5 days prior to the monthly performance review meetings, unless otherwise agreed by the Contract Manager.

### **Publicity & Comms**

39. Contractors will be required to provide details of how to sign up to Training (via email or a web link).

Contractors, and where appropriate subcontractors, must ensure that all Eligible Learners and staff linked to Training delivery are aware of DFE's Whistleblowing and Complaints policies and processes. Whistleblowing involves entering a 'whistleblowing' webform on the 'Contact the Department for Education' page, which can be found below:

[https://form.education.gov.uk/service/Contact\\_the\\_Department\\_for\\_Education](https://form.education.gov.uk/service/Contact_the_Department_for_Education)

Whistleblowing entries for Training must be clearly marked as 'Skills Bootcamps' and will be submitted via the DFE's whistleblowing submission process and will be escalated to the relevant policy team. This will be monitored as part of the contract monitoring process.

Contractors must adhere to any Communications Guidelines issued by DFE from time to time.

Contractors may be subject to inspection of Training provision by Ofsted for the purposes of a thematic survey of Training, which may occur alongside or in addition to an Ofsted inspection of existing provision.

## **Schedule 2 Terms and Conditions**

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## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, the following expressions have the following meanings, unless inconsistent with the context:

**“Area”** means the geographical area within England in respect of which the Contractor is appointed to provide the Services as set out in Schedule 9.

**“Business Days”** means Mondays to Fridays (inclusive) in each week, excluding bank and other public holidays in England.

**“CCN”** means a Change Control Note in the form set out in schedule 6.

**“Charges”** means the fees subject to clause 8 payable to the Contractor for the provision of the Services calculated in accordance with schedule 3.

**“Commercially Sensitive Information”** means:

- (a) the Quotation;
- (b) details of the Contractor’s Intellectual Property Rights; and
- (c) the Contractor’s business and investment plans,

which the Contractor has indicated to DFE that, if disclosed by the Authority, would cause DFE and or the Contractor significant commercial disadvantage or material financial loss.

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

**“Consortium”** means an association of 2 or more persons acting together to deliver the Services but excludes Sub-Contractors.

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

- (a) signed by all the Consortium Members as at the Effective Date; and
- (b) adhered to by Consortium Members who join the Consortium after the Effective Date by signing a Deed of Adherence

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

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

**“Contract Period”** means the start and end date of the Contract as set out in Clause 2 subject to any extensions.

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

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive, and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and **“Crown Body”** is an emanation of the foregoing.

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

**“Deed of Adherence”** means a deed under which a new Consortium Member shall covenant with the other Consortium Members to adhere to the terms of the Consortium Agreement in any form approved by DFE in writing.

**“Default”** means breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach, or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Personnel in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

**“DFE Premises”** means any premises owned by, leased, or hired to or otherwise controlled by DFE or which DFE nominates as such by notice in writing to the Contractor.

**“DFE Security Standards”** means the security standards as set out in Schedule 7.

**“DFE Trade Marks”** means proprietary Trade Mark rights of DFE including those notified to the Contractor by DFE from time to time.

**“Dispute”** means any dispute between the Parties in connection with the Contract.

**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

**“DPA”** means the Data Protection Act 2018 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice published by the Information Commissioner or relevant government department in relation to such legislation.

**“Effective Date”** means the date on which the last signatory signs the Contract.

**“EIR”** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to them.

**“Employment Liabilities”** means all actions, proceedings, costs (including reasonable legal costs), losses, damages, fines, penalties, compensation, awards, demands, orders, expenses and liabilities connected with or arising from all and any laws including, without limitation, directives, statutes, secondary legislation, orders, codes of practice, contractual obligations and other common law rights whether of the European Union, United Kingdom or any other relevant authority relating to or connected with:

- (a) the employment and dismissal of employees (including their health and safety at work); and
- (b) the engagement, use and termination of individuals other than employees who provide services (including their health and safety at work),

and all wages, holiday pay and employment benefit costs due in respect of (a) or (b) above, including claims for protective awards.

**“FOIA”** means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to it.

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

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

**“General Anti-Abuse Rule”** means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance Contributions.

**“Good Industry Practice”** means the standards, practices, methods, and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**“Halifax Abuse Principle”** means the principle explained in the CJEU Case C-255/02 Halifax and others.

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

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

**“Intellectual Property Rights”** means patents, inventions, trade-marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade and/or business names, rights in confidential information and know how, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**“KPIs”** means the key performance indicators in relation to the Services set out in schedule 4 which the Contractor shall comply with.

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

- (a) a substantial portion of the Contract; or

- (b) any of the obligations set out in clauses 9, 10, 12, 15, 17 and 33 and in schedule 7.

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

**“Occasion of Tax Non-Compliance”** means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
- (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

**“Performance Measures/Standards”** means the standards which the Contractor will be measured against in respect of the delivery of the Services aligned to defined Key Performance Indicators (KPIs).

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

**“Prohibited Act”** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the DFE a financial or other advantage to:
- (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
- (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts; or
  - (iii) the defrauding, attempting to defraud or conspiring to defraud the DFE;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice, or conduct has been carried out in the UK.

**“Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor

would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

**“Quotation”** means the Contractor’s quotation for the Services as set out in Schedule 9.

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

**“Regulatory Body”** means a government department and regulatory, statutory, and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the DFE.

**“Relevant Conviction”** means a conviction for an offence involving violence or dishonesty, of a sexual nature or against minors, or for any other offence that is relevant to the nature of the Services.

**“Relevant Requirements”** means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

**“Relevant Tax Authority”** means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

**“Replacement Contractor”** means any third-party supplier appointed by the DFE to supply any services which are substantially similar to any of the Services in substitution for the Contractor following the expiry, termination or partial termination of the Contract.

**“Request for Information”** means a request for information under the FOIA or the EIR.

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

**“Services”** means the services described in the Specification.

**“Services Commencement Date”** means the Effective Date or any later date set out in Schedule 9.

**“Service Credits”** means the service credits specified in schedule 4 which shall be payable to the DFE by the Contractor in the event that the Service Levels are not met in respect of Services.

**“Service Level”** means the levels of Service defined in schedule 4.

**“Service Period”** means the following:

- (a) the first Service Period of the Contract shall begin on the Services Commencement Date and shall expire at the end of the calendar month in which the Service Commencement Date falls; and
- (b) after the first Service Period of the Contract a Service Period shall be a calendar month during the Contract save that the final Service Period of the Contract shall commence on the first day of the calendar month in which the Contract expires or terminates and shall end on the expiry or termination of the Contract.

**“Service Users”** means those receiving the Services.

**“Specification”** means the description of the Services to be supplied under the Contract set out in schedule 1.

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

**“Sub-Contract”** means a contract between 2 or more suppliers, at any stage of remoteness from DfE in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and **“Sub-Contractor”** shall be construed accordingly.

**“Term”** means the period from the Effective Date until the date the Contract ends for whatever reason.

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

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

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

**“Variation”** means any variation to the Contract requiring a Change Control Note to be completed in accordance with schedule 6.

1.2 The following notes of construction and interpretation apply to the Contract:

- 1.2.1 references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted, or consolidated and all statutory instruments or orders made pursuant to it, whether replaced before or after the date of the Contract which are in force prior to the date of the Contract;
- 1.2.2 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.2.3 the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context;
- 1.2.4 the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;
- 1.2.5 any reference in the Contract to a clause or schedule is a reference to a clause or schedule of the Contract and references in any schedule to paragraphs relate to the paragraphs in that schedule;
- 1.2.6 the clause headings are included for convenience only and shall not affect the interpretation of the Contract; and
- 1.2.7 the schedules and appendices form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules.

## **2. CONTRACT PERIOD**

- 2.1 The Contract commences on the Effective Date and, subject to earlier termination in accordance with the provisions of this Contract, or extension as set out in this clause 2, will terminate on the earlier of: (a) 30<sup>th</sup> June 2023; or (b) completion of Training or withdrawal from Training by the final Eligible Learner who has signed up to Training with the Contractor. The date end date of the 30<sup>th</sup> June 2023 is a deadline by which learners must have received all training, passed all tests and have had the offer of a job interview, which means that they must have achieved Milestone 3 on Pathways A and B or Milestone 2 on Pathway D.

- 2.2 The DFE may extend the Contract Period for up to a further 12 months as the DFE may choose, by giving written notice to the Contractor no later than 1 month prior to expiry.

### **3. THE SERVICES**

- 3.1 The Contractor shall provide the Services in the Area in accordance with the Specification.
- 3.2 DFE may appoint other Contractors for the Services in the Area.
- 3.3 The Contractor shall, in performing its obligations under the Contract:
- 3.3.1 conform to the requirements of the Specification or as otherwise agreed in writing between the Parties;
  - 3.3.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the DFE specified by the DFE from time to time;
  - 3.3.3 comply with Good Industry Practice;
  - 3.3.4 ensure that the Services are provided by competent and appropriately trained personnel;
  - 3.3.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
  - 3.3.6 comply with the KPIs, Service Levels and Service Credit requirements set out in schedule 4;
  - 3.3.7 insofar as is reasonably practicable, take steps to comply with any Guidance Note issued by the DFE from time to time no later than 14 days of the same being brought to the attention of the Contractor by the DFE;
  - 3.3.8 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation; and
  - 3.3.9 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of the DFE, the Service Users and all other persons including members of the public.
- 3.4 DFE may provide data and materials to the Contractor and access to systems for the purposes of providing the Services that the Contractor may use but only to the extent necessary to enable the Contractor to provide the Services.
- 3.5 All equipment and other property brought onto DFE Premises shall be at the Contractor's own risk and the DFE shall have no liability for any loss of or damage to any such equipment and property unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence of the DFE.
- 3.6 Any land or DFE Premises made available from time to time to the Contractor by the DFE in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or DFE Premises as a licensee and shall vacate the same on completion, termination or abandonment of the Contract or the task in respect of which such land or DFE Premises was made available.

- 3.7 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or any of the Personnel and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the DFE retains the right at any time to use any DFE Premises in any manner.

#### **4. CONSORTIA**

- 4.1 If the Contractor is a Consortium it shall comply with the terms of this clause 4.
- 4.2 The Contractor may appoint additional or replacement Consortium Members to assist it in carrying out its obligations under the Contract subject to compliance with clause 4.3.
- 4.3 No new person or entity may become a Consortium Member until:
- 4.3.1 the DFE has given its prior written consent to the new Consortium Member;
  - 4.3.2 the new Consortium Member has signed a Deed of Adherence; and
  - 4.3.3 a copy of the Deed of Adherence has been given to the DFE.
- 4.4 The Contractor shall promptly inform the DFE if and how any Consortium Member breaches the terms of the Consortium Agreement.

#### **5. TRANSFER AND SUB-CONTRACTING**

- 5.1 Save as set out in this clause 5 the Contractor may not sub-contract, assign, transfer, charge the benefit and/or delegate the burden of the whole or any part of the Contract (a “**Transfer**”) without the prior written consent of the DFE.
- 5.2 If the DFE consents to a Transfer the Contractor will evidence the Transfer in writing and provide a copy of the Transfer document on request.
- 5.3 The Contractor may award Sub-Contracts with a value per annum not exceeding £10,000 without the DFE's consent.
- 5.4 Where the DFE has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of the DFE, be sent by the Contractor to the DFE as soon as reasonably practicable.
- 5.5 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the DFE's prior written consent.
- 5.6 The DFE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the DFE's right of termination pursuant to clause 23 unless the Sub-Contractor can remedy the breach to the DFE's satisfaction within 21 days of receipt by the Contractor of written notice from the DFE requiring the Sub-Contract to be terminated.
- 5.7 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 5.8 If the DfE believes there are:
- 5.8.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
  - 5.8.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the DfE may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.

## **6. PERSONNEL**

- 6.1 The DFE may refuse admission to DFE Premises and/or direct the Contractor to end the involvement in the Services of any Personnel whom the DFE believes is a security risk.
- 6.2 If the DFE requires the removal of any Personnel pursuant to clause 6.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor's cost.
- 6.3 The Contractor shall use its reasonable endeavours to ensure continuity of Personnel and to ensure that the turnover rate of Personnel is at least as good as the prevailing industry norm for similar services, locations and environments.
- 6.4 The Contractor shall ensure that no person who discloses a Relevant Conviction or who is found to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service Procedures or otherwise), is employed or engaged in providing the Services without the DFE's prior written consent.
- 6.5 For each of the Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the DFE owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the Contractor shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.
- 6.6 Except in respect of any transfer of staff under TUPE, for the Term and for 12 months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any staff of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at staff of the other Party.

## **7. TUPE**

- 7.1 No later than 6 Months prior to the end of the Term the Contractor shall fully and accurately disclose to the DFE, within 30 days of the request, all information that the DFE may reasonably request in relation to the Staff including the following:
  - 7.1.1 the total number of Staff whose employment/engagement shall terminate at the end of the Term;
  - 7.1.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 7.1.1;
  - 7.1.3 the terms and conditions of employment/engagement of the Staff referred to in clause 7.1.1, their job titles and qualifications;
  - 7.1.4 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
  - 7.1.5 details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union

(together the “**TUPE Information**”).

- 7.2 At intervals determined by the DFE (which shall not be more frequent than once every 30 days) the Contractor shall give the DFE updated TUPE Information.
- 7.3 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Contractor.
- 7.4 The DFE may use TUPE Information for the purposes of any retendering process.
- 7.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the DFE, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:
  - 7.5.1 the provision of TUPE Information;
  - 7.5.2 any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;
  - 7.5.3 any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the DFE or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
  - 7.5.4 any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
  - 7.5.5 any claim by any person who is transferred by the Contractor to the DFE and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- 7.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the DFE and provide the DFE with up to date TUPE Information.
- 7.7 This clause 7 applies during the Term and indefinitely thereafter.
- 7.8 The Contractor undertakes to the DFE that, during the 12 Months prior to the end of the Term the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):
  - 7.8.1 amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);

- 7.8.2 terminate or give notice to terminate the employment or engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- 7.8.3 transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
- 7.8.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

## 8. CHARGES

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 8.2 In consideration for the provision of the Services the DFE shall pay the Charges in accordance with the schedule 3 subject to the receipt of correct invoices pursuant to clause 8.8 being issued by the Contractor.
- 8.3 The DFE shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this paragraph, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 8.4 Except where otherwise expressly stated in schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Term.
- 8.5 The Charges are exclusive of Value Added Tax (“**VAT**”) and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the DFE of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 8.6 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.
- 8.7 The DFE may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 8.8 Invoices shall be submitted electronically by email to [wave2.skillsbootcamps@education.gov.uk](mailto:wave2.skillsbootcamps@education.gov.uk) within 30 days of the end of the relevant invoicing date. An invoice is a “**Valid Invoice**” if it is legible and includes:

- 8.8.1 the date of the invoice;
- 8.8.2 Contractor's full name and address;
- 8.8.3 Contract reference number;
- 8.8.4 the charging period;
- 8.8.5 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
- 8.8.6 days and times worked (if applicable);
- 8.8.7 Service Credits (if applicable); and
- 8.8.8 VAT if applicable.
- 8.9 The DFE shall not pay an invoice which is not a Valid Invoice.
- 8.10 The DFE intends to pay Valid Invoices promptly. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause 8.10 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 8.11 The DFE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.12 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the DFE.
- 8.13 The DFE shall not be obliged to pay the final invoice until the Contractor has carried out all of the Services.
- 8.14 The Contractor shall ensure that a term is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- 8.15 If the DFE disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within 10 Business Days notify the Contractor of the reasons for disputing the invoice. The DFE may withhold the disputed amount pending resolution of the dispute.
- 8.16 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 36.

## **9. TAX and VAT**

- 9.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under the Contract it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- 9.2 If the Services are liable for VAT the Contractor shall comply with HMRC rules and regulations. The Contractor will be liable for paying to HMRC any identified VAT including those which may fall due.

- 9.3 If the Contractor is liable to NICs in respect of consideration received under the Contract it shall comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- 9.4 The DFE may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it.
- 9.5 A request under clause 9.4 may specify the information which the Contractor must provide and the period within which that information must be provided.
- 9.6 The DFE may terminate this Contract if:
- 9.6.1 in the case of a request mentioned in clause 9.4 the Contractor:
- (i) fails to provide information in response to the request within a reasonable time; or
  - (ii) provides information which does not demonstrate either how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it;
- 9.6.2 it receives information which demonstrates that, if clauses 9.1 to 9.3 apply, the Contractor is not complying with those clauses.
- 9.7 The DFE may supply any information which it receives under clause 9.4 to HMRC.
- 9.8 The Contractor bears sole responsibility for the payment of tax and national insurance contributions due from it in relation to any payments or arrangements made under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract.
- 9.9 The Contractor will account to the appropriate authorities for any applicable income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract. The Contractor shall indemnify DFE against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the Contractor of its obligations under the Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by DFE in connection with any such assessment or claim.
- 9.10 The Contractor authorises the DFE to provide HMRC and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under the Contract whether or not DFE is obliged as a matter of law to comply with such request.
- 9.11 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- 9.11.1 notify the DFE in writing of such fact within 5 Business Days of its occurrence; and
- 9.11.2 promptly give the DFE:
- (i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
  - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the DFE may reasonably require.

## **10. PREVENTION OF CORRUPTION**

- 10.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Personnel, have at any time prior to the Effective Date:
- 10.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
  - 10.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 10.2 The Contractor shall not:
- 10.2.1 commit a Prohibited Act; or
  - 10.2.2 do or suffer anything to be done which would cause the DFE or any of its employees, consultants, contractors, Sub-Contractors, or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 10.3 The Contractor shall:
- 10.3.1 and procure that its Sub-Contractors shall, establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - 10.3.2 keep appropriate records of its compliance with its obligations under clause 10.3.1 and make such records available to the DFE on request.
- 10.4 The Contractor shall immediately notify the DFE in writing if it becomes aware of any breach of clauses 10.1 and/or 10.2, or has reason to believe that it has or any of the Personnel have:
- 10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 10.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or
  - 10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 10.5 If the Contractor notifies the DFE pursuant to clause 10.4, the Contractor shall respond promptly to the DFE's enquiries, co-operate with any investigation, and allow the DFE to audit any books, records, and any other relevant documentation.
- 10.6 If the Contractor is in Default under clauses 10.1 and/or 10.2, the DFE may by notice:
- 10.6.1 require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
  - 10.6.2 immediately terminate the Contract.

- 10.7 Any notice served by the DFE under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the party who the DFE believes has committed the Prohibited Act and the action that the DFE has taken (including, where relevant, the date on which the Contract shall terminate).

## **11. DISCRIMINATION**

- 11.1 The Contractor shall perform its obligations under the Contract in accordance with all applicable equality law.
- 11.2 The Contractor shall comply with DFE's equality and diversity policy as given to the Contractor from time to time and any other requirements and instructions which the DFE reasonably imposes in connection with any equality obligations imposed on the DFE at any time under equality law.
- 11.3 The Contractor indemnifies the DFE in full from, and against, all Employment Liabilities that may arise as a result of any claims brought against the DFE by any of its employees, agents, consultants and contractors ("**DFE Personnel**") and/or any of the Personnel where such claim arises from any act or omission of the Personnel in respect of anti-discrimination legislation. The Contractor will also provide all reasonable cooperation, assistance, and information as the DFE may request in connection with any investigation by the DFE into any complaint or other grievance received by it from any of the DFE Personnel or Personnel in respect of anti-discrimination legislation which may have arisen from, or been contributed to by, any act or omission of the Contractor or any Personnel.

## **12. INTELLECTUAL PROPERTY**

- 12.1 All Intellectual Property Rights in materials:
- 12.1.1 furnished to or made available to the Contractor by or on behalf of the DFE (the "**DFE IP Materials**") shall remain the property of the DFE (save for Copyright and Database Rights which shall remain the property of the Crown);
- 12.1.2 prepared by or for the Contractor specifically in connection with the provision of the Services, (the "**Service Specific IP Materials**") shall remain the property of the Contractor subject to the licence provided for by Clause 12.3.2 below; and
- 12.1.3 owned by or licensed to the Contractor, its sub-contractors or any third party, the use of which is necessary for or incidental to the provision of the Services (the "**Contractor Background Materials**") shall remain the property of the Contractor and/or its licensors.
- 12.2 The Contractor shall not, and shall ensure that Personnel shall not, use or disclose the DFE IP Materials without the DFE's approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.
- 12.3 The Contractor hereby grants to the DFE:
- 12.3.1 a non-exclusive, royalty-free licence during the Term and for a period of 12 months immediately thereafter to use the Contractor Background Materials solely to the extent necessary for the DFE's reasonable use in connection to the Services; and
- 12.3.2 a non-exclusive, royalty-free, perpetual licence with the right to sublicense to any other part of the Crown or a third-party contractor assisting DFE in relation the evaluation of the Services, to use Service Specific IP Materials in connection with the evaluation of the Services and other internal purposes of the DFE, and provided always that the DFE shall not, and shall ensure that Personnel shall not, otherwise use or disclose the Contractor Background Materials or the Service Specific IP Materials without the Contractor's approval (not to be unreasonably held or delayed.)

- 12.4 Not Used.
- 12.5 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the DFE a non-exclusive licence or, if itself a licensee of those rights, shall grant to the DFE an authorised sub-licence, to use, including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) such Intellectual Property Rights. The Contractor shall notify the DFE of any third party Intellectual Property Rights to be used in connection with the Contract prior to their use in connection with the Contract or the creation or development of the Service Specific IP Materials. This provision will be in force for the Term of the contract and for evaluation purposes for 12 months thereafter.
- 12.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Contractor shall indemnify and keep indemnified the DFE and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the DFE may suffer or incur as a result of or in connection with any breach of this clause 14, except to the extent that any such claim arises from:
- 12.6.1 items or materials supplied by the DFE; or
- 12.6.2 the use of data supplied by the DFE which is not required to be verified by the Contractor under any provision of the Contract.
- 12.7 The DFE shall notify the Contractor in writing of any claim or demand brought against the DFE for infringement or alleged infringement of any Intellectual Property Rights in materials supplied and/or licensed by the Contractor.
- 12.8 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in materials supplied and/or licensed by the Contractor to the DFE, provided always that the Contractor shall:
- 12.8.1 consult the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;
- 12.8.2 take due and proper account of the interests and concerns of the DFE; and
- 12.8.3 not settle or compromise any claim without the DFE's prior written consent (not to be unreasonably withheld or delayed).
- 12.9 Notwithstanding clause 12.8. the DFE may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the DFE takes action the Contractor shall at the request of the DFE afford to the Contractor all reasonable assistance to the DFE for the purpose of contesting such claim.
- 12.10 The DFE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the DFE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract subject to the Contractor indemnifying the DFE on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- 12.11 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the DFE and, at its own

expense and subject to the consent of the DFE (not to be unreasonably withheld or delayed), use reasonable endeavours to:

12.11.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 12 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or

12.11.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and Services, which are the subject of the alleged infringement, on terms which are acceptable to the DFE.

12.12 If the Contractor is unable to comply with clauses 12.11.1 and 12.11.2 within 20 Business Days of receipt of the Contractor's notification the DFE may terminate the Contract with immediate effect by notice in writing.

12.13 Not used

12.14 Not used

12.15 Not used

12.16 The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are or are to be the DFE IP Materials any act or thing which:

12.16.1 would or might jeopardise or invalidate any Trade Mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant Trade Mark registry; or

12.16.2 would or might prejudice the right or title of the DFE to any of the DFE IP Materials.

12.17 The Contractor shall comply with the DFE's branding guidelines in connection with the Contract and shall not use any other branding, including its own, other than as set out in the DFE's branding guidelines or as otherwise agreed with the DFE. Any services provided under this contract will be advertised, marketed, and provided in accordance with the naming convention and branding of the DFE's choosing at any time during the Term. All rights to use DFE's naming conventions, branding and Trade Marks will cease upon expiry of the Contract.

12.18 When using DFE Trade Marks the Contractor shall observe all reasonable directions given by the DFE from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:

12.18.1 adopt or use any Trade Mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any DFE Trade Mark, or unfairly competes with any DFE Trade Mark; or

12.18.2 apply anywhere in the world to register any Trade Marks identical to or so nearly resembling any DFE Trade Mark as to be likely to deceive or cause confusion.

### **13. DATA, SYSTEMS HANDLING AND SECURITY**

- 13.1 The Parties shall comply with the provisions of Schedule 7, including meeting the applicable DFE Security Standards..

#### **14. PUBLICITY AND PROMOTION**

- 14.1 Subject to clause 15.2, without prejudice to the DFE's obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party, following a request to the other Party's nominated representative. In the event of consent being refused, the Party making the request may request the other Party to refer its request to the Contractor's Director of Marketing or equivalent or, as the case may be, the DFE Senior Responsible Officer or their deputy.
- 14.2 The Contractor shall use reasonable endeavours to ensure its Personnel comply with clause 14.1.
- 14.3 Without prejudice to the generality of clauses 12.17 and 14.1, the Contractor shall not itself, and shall procure that Consortium Members shall not, use the DFE's name, brand or DFE Trade Marks or the Personal Data of the DFE to sell, promote, market, or publicise the Contractor's other programmes, courses, services or other activities.
- 14.4 Subject to clauses 12 and 15 DFE may disclose, copy, and otherwise distribute to the public, including but not limited to, by way of the Open Government Licence, any information arising out of the Services or comprised in any work relating to the Services.

#### **15. CONFIDENTIALITY**

- 15.1 Except to the extent set out in this clause 15 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- 15.2 The Contractor hereby gives its consent for the DFE to publish the whole Contract including from time to time agreed changes to the Contract.
- 15.3 The Contractor may only disclose the DFE's Confidential Information to Personnel who are directly involved in the provision of the Services and who need to know the information and shall ensure that Personnel are aware of and shall comply with these obligations as to confidentiality.
- 15.4 The Contractor shall not, and shall procure that Personnel do not, use any of the DFE's Confidential Information received otherwise than for the purposes of the Contract.
- 15.5 Clause 15.1 shall not apply to the extent that:
- 15.5.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
- 15.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 15.5.3 such information was obtained from a third party without obligation of confidentiality;

- 15.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- 15.5.5 it is independently developed without access to the other Party's Confidential Information.
- 15.6 Nothing in clause 15 shall prevent the DFE disclosing any Confidential Information obtained from the Contractor:
  - 15.6.1 for the purpose of the examination and certification of the DFE's accounts;
  - 15.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DFE has used its resources;
  - 15.6.3 to any other crown body and the Contractor hereby acknowledges that all government departments receiving such Confidential Information may further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or
  - 15.6.4 to any consultant, contractor or other person engaged by the DFE provided that in disclosing information under clause 15.8 the DFE discloses;
    - I. only the information which is necessary for the purpose of audit and evaluation of the success of the Bootcamps and the policy intent
    - II. and procures that that such person enters into a confidentiality agreement to ensure that the information is treated in confidence on terms similar to clauses 15.1 and 15.3 and 15.4; and
  - 15.6.5 to the Serious Fraud Office where the Contractor has reasonable grounds to believe that the Contractor is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 15.7 Nothing in clauses 15.1 to 15.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- 15.8 The DFE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the DFE's Confidential Information is disclosed pursuant to clause 15.6 is made aware of the DFE's obligations of confidentiality.
- 15.9 If the Contractor does not comply with clauses 15.1 to 15.5 the DFE may terminate the Contract immediately on notice to the Contractor.

## **16. FREEDOM OF INFORMATION**

- 16.1 The Parties acknowledge that each Party may be subject to the requirements of the FOIA and the EIR.
- 16.2 The Parties shall transfer to the other Party all Requests for Information that it receives without delay and in any event within 48 hours of receipt and shall:
  - 16.2.1 give the other Party a copy of all Information in its possession or control in the form that the other Party requires within 5 Business Days (or such other period as the DFE may specify) of the other Party's request;

16.2.2 provide all necessary assistance as reasonably requested by the other Party to enable the other Party to comply with its obligations under the FOIA and EIR; and

16.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the DFE.

16.3 The DFE shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

## **17. OFFICIAL SECRETS ACTS AND FINANCE ACT**

17.1 The Contractor shall comply with the provisions of:

17.1.1 the Official Secrets Acts 1911 to 1989; and

17.1.2 section 182 of the Finance Act 1989.

## **18. LIABILITY**

18.1 Neither Party excludes nor limits its liability (if any) to the other:

18.1.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;

18.1.2 for personal injury or death resulting from its negligence;

18.1.3 under section 2(3) Consumer Protection Act 1987;

18.1.4 any breach of clause 15 or Schedule 7;

18.1.5 for bribery, its own fraud or fraudulent misrepresentation by it or its respective staff, employees or Personnel, as applicable; or

18.1.6 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.

18.2 Subject to clauses 18.1 and 18.3, the Contractor shall indemnify the DFE and keep the DFE indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor or any Personnel on the Premises, including in respect of death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

18.3 The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses 12 (Intellectual Property) and 9 (Tax).

18.4 Subject to clauses 18.1, 18.3 and 18.6, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:

18.4.1 for any losses of an indirect or consequential nature;

18.4.2 for any claims for loss of profits, revenue, business, or opportunity (whether direct, indirect or consequential); or

- 18.4.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.
- 18.5 Subject to clauses 18.1 and 18.3, the maximum liability of either Party to the other under the Contract, whether in contract, tort (including negligence) or otherwise:
- 18.5.1 in respect of damage to property is limited to £1,000,000 in respect of any one incident or series of connected incidents; and
- 18.5.2 in respect of any claim not covered by clause 18.5.1, is limited in each calendar year in aggregate to 150% of the sum of the Charges payable in that year.
- 18.6 The DFE may recover from the Contractor the following losses incurred by the DFE to the extent they arise as a result of a Default by the Contractor:
- 18.6.1 any additional operational and/or administrative costs and expenses incurred by the DFE, including costs relating to time spent by or on behalf of the DFE in dealing with the consequences of the default;
- 18.6.2 any wasted expenditure or charges;
- 18.6.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and/or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
- 18.6.4 any compensation or interest paid to a third party by the DFE; and
- 18.6.5 any fine or penalty incurred by the DFE and any costs incurred by the DFE in defending any proceedings which result in such a fine or penalty.
- 18.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 18.8 All property of the Contractor whilst on the DFE's premises shall be there at the risk of the Contractor and the DFE shall accept no liability for any loss or damage howsoever occurring to it.
- 18.9 The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £5,000,000 for any one claim, for professional indemnity insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £1,000,000 for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.
- 18.10 The Contractor shall supply to the DFE on demand copies of the insurance policies maintained under clause 18.9.
- 18.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 18.12 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.

## **19. WARRANTIES AND REPRESENTATIONS**

### **19.1 The Contractor warrants and represents that:**

- 19.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- 19.1.2 in entering the Contract it has not committed any fraud;
- 19.1.3 as at the Effective Date, all information contained in the Quotation remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the DFE prior to execution of the Contract;
- 19.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;
- 19.1.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 19.1.6 the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party's work or materials provided that this clause 19.1.6 shall not apply to any Service Specific IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor);
- 19.1.7 the use by the DFE of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;
- 19.1.8 in the 3 years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 19.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- 19.1.10 it has notified the DFE in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

## **20. FORCE MAJEURE**

- 20.1 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 20.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 20.2 If either Party is prevented from performance of its obligations for a continuous period in excess of 1 month, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 20.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use reasonable endeavours to end Force Majeure or to find solutions by which the Contract may be performed despite the Force Majeure.

## **21. MONITORING AND REMEDIATION**

- 21.1 The DFE or its authorised representatives may visit on reasonable notice to the Contractor any premises of the Contractor, any Consortium Member, or any other premises at which the Services (or any part of them) are being or are to be performed to ascertain that the Contractor is conforming in all respects with its obligations arising under the Contract and otherwise to monitor and quality assure the provision of the Services.
- 21.2 During such visits, the DFE may inspect and take copies of such of the records of the Contractor and any Consortium Member as relate to the performance of their obligations under the Contract.
- 21.3 If the DFE reasonably considers that any provision of the Contract is at risk of not being complied with it may, notwithstanding and without prejudice to any other right or remedy that it may have under the Contract or otherwise:
- 21.3.1 require the Contractor to produce a plan of remedial action in order to remedy or remove such risk, which shall be subject to the approval of the DFE (not to be unreasonably withheld) and which, once approved, the Contractor shall implement; and
- 21.3.2 monitor, supervise, direct and/or guide the Contractor's provision of the Services until the DFE reasonably considers that any such risk has been remedied or removed. The Contractor shall cooperate at all times with the DFE in this regard.
- 21.4 If the Contractor fails to comply with any provision of the Contract or fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the DFE may instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 21 days or such other period of time as the DFE may direct.

## **22. Not used.**

## **23. TERMINATION**

- 23.1 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
- 23.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 23.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - 23.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
  - 23.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - 23.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - 23.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
  - 23.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 23.1.8 any event similar to those listed in clauses 23.1.1 to 23.1.7 occurs under the law of any other jurisdiction.
- 23.2 Not used.
- 23.3 The Contractor shall notify the DFE immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 1 month of:
- 23.3.1 being notified that a Change of Control has occurred; or
  - 23.3.2 where no notification has been made, the date that the DFE becomes aware of the Change of Control,
- but shall not be permitted to terminate where approval was granted prior to the Change of Control.
- 23.4 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a partnership and:
- 23.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme, or arrangement with, or assignment for the benefit of, its creditors;
  - 23.4.2 it is for any reason dissolved;

23.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;

23.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets;

23.4.5 the partnership is deemed unable to pay its debts within the meaning of sections 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or

23.4.6 any of the following occurs in relation to any of its partners:

23.4.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;

23.4.6.2 a petition is presented for his bankruptcy;

23.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or

23.4.6.4. any event similar to those listed in clauses 23.4.1 to 23.4.6 occurs under the law of any other jurisdiction.

23.5 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a limited liability partnership and:

23.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme, or arrangement with, or assignment for the benefit of, its creditors;

23.5.2 it is for any reason dissolved;

23.5.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;

23.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;

23.5.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;

23.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets;

23.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

23.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

23.5.9 any event similar to those listed in clauses 23.5.1 to 23.5.8 occurs under the law of any other jurisdiction.

- 23.6 References to the Insolvency Act 1986 in clause 23.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 23.7 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
- 23.7.1 the Contractor has not remedied the Default to the satisfaction of the DFE within 21 Business Days or such other period as may be specified by the DFE, after issue of a notice specifying the Default and requesting it to be remedied
- 23.7.2 the Default is not, in the opinion of the DFE, capable of remedy; or
- 23.7.3 the Default is a Material Breach.
- 23.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.8.1 the Contractor's warranty in clause 19.1.10 is materially untrue;
- 23.8.2 the Contractor commits a material breach of its obligation to notify the DfE of any Occasion of Non-Tax Compliance; or
- 23.8.3 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.
- 23.9 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.9.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- 23.9.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract; or
- 23.9.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.
- 23.10 If the DFE terminates the Contract under clauses 23.7, 23.8 or 23.9:
- 23.10.1 and makes other arrangements for the supply of the Services, the DFE may recover from the Contractor the cost reasonably incurred of making those other arrangements; and
- 23.10.2 the DFE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause 23.
- 23.11 The DFE may terminate the Contract (or any part of it) at any time by giving at least 1 months' prior written notice to the other Party.
- 23.12 If the DFE terminates the Contract under clause 23.11 the DFE shall make no further payments to the Contractor except for Services supplied by the Contractor prior to

termination and in accordance with the Contract but where the payment has yet to be made by the DFE.

- 23.13 If any funding from governmental or other sources for the provision of the Services, or for a programme or a project to which the provision of the Services relates is withdrawn, reallocated or no longer available in such a way that the Contract cannot reasonably continue the DFE may terminate the Contract (or any part of it) by serving one months' written notice on the Contractor.
- 23.14 If the DFE terminates the Contract under clause 23.13 the DFE shall pay the Contractor for Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs), provided that the Contractor shall use all reasonable endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavoidability of such costs.
- 23.15 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the DFE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 23.16 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within 30 Business Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the DFE exercising its rights under clause 8.7 or to Force Majeure.
- 23.17 Save as otherwise expressly provided in the Contract:
- 23.17.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 23.17.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the DFE or the Contractor under clauses 8 (Payment), 9 (Tax and VAT), 10 (Prevention of Fraud), 12 (Intellectual Property Rights), 13 (Data), 15 (Confidentiality), 16 (Freedom of Information), 17 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 180 (Warranties and Representations), 19 (Liability), 23 (Termination) 24 (Retendering and Handover), 25 (Exit Management), 26 (Audit), and 37 (Governing Law and Jurisdiction).
- 23.18 Termination by DfE if monthly Performance Standards not met
- 23.18.1 If the Contractor fails to meet any of the monthly Performance Standards in any two consecutive months, at either Party's request to the other Party, both Parties must meet to work together in good faith to attempt to understand why the monthly Performance Standards have not been achieved and implement strategies jointly agreed between the Parties to attempt to enable the Contractor to achieve the monthly Performance Standards.
- 23.18.2 If the Parties agree on a strategy under clause 23.18.1 and, in the month following the implementation of the joint strategy under clause 23.18.1 the Contractor fails to achieve any of the monthly Performance Standards, DfE may terminate this Contract on 30 days' notice to the Contractor.

23.18.3 If Contractor fails to meet any of the monthly Performance Standards in any three consecutive months, DfE may terminate this Contract on 10 Business Days' notice to the Contractor.

- 23.19 The DfE may terminate the contract with immediate effect if it becomes aware that there has been an adverse finding against Contractor as a result of an investigation by the DVSA, whether or not resulting in removal of the authority to use delegated driving examiners.

**24. Not used**

**25. EXIT AND HANDOVER**

- 25.1 If the DFE requires a continuation of all or any of the Services at the end of the Term, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the DFE and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- 25.2 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the DFE free of charge with full access to Personnel, copies of all documents, reports, summaries, and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than 15 Business Days from the date that that request was made.

**26. AUDIT**

- 26.1 The Contractor shall keep and maintain until 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all Charges.
- 26.2 The Contractor agrees to make available to the DFE, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.
- 26.3 The Contractor shall permit duly authorised representatives of the DFE and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- 26.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the DFE and for carrying out examinations into the economy, efficiency and effectiveness with which the DFE has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

**27. ENTIRE AGREEMENT**

- 27.1 The Contract contains all the terms which the Parties have agreed in relation to the subject matter of the Contract and supersedes any prior written or oral agreements, representations, or understandings between the Parties.
- 27.2 Nothing in this clause 27 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

## **28. PARTNERSHIP**

- 28.1 Nothing in the Contract is intended to or shall operate to create a legal partnership between the Parties or to authorise either Party to act as an agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including making any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **29. WAIVER**

- 29.1 No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

## **30. CHANGE CONTROL**

- 30.1 Either Party may at any time request in writing a Variation in accordance with the change control procedure set out in schedule 6 (the “**Change Control Procedure**”). No Variation shall be effective unless made in accordance with the Change Control Procedure.

## **31. COUNTERPARTS**

- 31.1 The Contract may be executed in any number of counterparts, each of which so executed and delivered shall constitute an original, but together shall constitute one and the same instrument.

## **32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 32.1 The provisions of clauses 7.5 and 12.6 confer benefits on a Replacement Contractor and are intended to be enforceable by a Replacement Contractor by virtue of the Contracts (Rights of Third Parties) Act 1999 (“**CRTPA**”).
- 32.2 Subject to clause 32.1, a person who is not a Party has no right under CRTPA to enforce provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- 32.3 A Replacement Contractor may not enforce or take steps to enforce the provisions of clauses 7.5 or 12.6 without DFE’s prior written consent.
- 32.4 The Parties may amend the Contract without the consent of any Replacement Contractor or any other third party.

## **33. CONFLICTS OF INTEREST**

- 33.1 The Contractor shall:
- 33.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and
- 33.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the DFE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 33 as a “**Conflict of Interest**”.

- 33.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 33 the Contractor shall forthwith provide full particulars to the DFE.
- 33.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations, and activities in a politically neutral fashion.
- 33.4 Without prejudice to the foregoing provisions of this clause 33, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:
- 33.4.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the DFE (acting reasonably); and
- 33.4.2 give the DFE a comprehensive and detailed written statement of the action it had taken.
- 33.5 If the DFE is not satisfied with the Contractor's actions, the Contractor shall, on request by the DFE promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).
- 33.6 Without prejudice to any other right or remedy it may have, the DFE may terminate the Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the DFE, there is any continuing breach by the Contractor of the provisions of this clause 33.

#### **34. FURTHER ASSURANCE**

- 34.1 The Parties shall do or procure the doing of all such acts and things and will execute or procure the execution of all such documents as may be reasonably required including on or subsequent to the end of the Contract to vest in the relevant Party all rights granted under the Contract and otherwise to comply with its terms.

#### **35. NOTICES**

- 35.1 Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, facsimile or e-mail, addressed to the recipient at its registered office or its address (or such other address, facsimile number or e-mail address as may be notified in writing from time to time).
- 35.2 The notice, demand or communication shall be deemed to have been duly served:
- 35.2.1 if delivered by hand, when left at the proper address for service;
- 35.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;
- 35.2.3 if given or made by facsimile or e-mail, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post or (where being sent to an address in a different country to where posted) airmail to the other Party within 24 hours after transmission and that, in the case of transmission by email where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).
- 35.3 If proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.

## **36. DISPUTE RESOLUTION**

- 36.1 Any Dispute shall be dealt with in accordance with this clause 36.
- 36.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within 15 days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.
- 36.3 If a Dispute cannot be resolved by negotiation as referred to in clause 36.2 within 30 days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs.

## **37. GOVERNING LAW AND JURISDICTION**

- 37.1 The Contract and any non-contractual obligations arising out of or connection with it will be governed by and construed in accordance with English Law.
- 37.2 The courts of England shall have exclusive jurisdiction to settle any dispute which arises out of or in connection with the Contract.
- 37.3 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.

## Schedule 3 Financials

### **Basis of payment and invoicing**

1. DFE shall pay the Contractor the Charges in accordance with the Contract, subject to successful delivery of the Services against the KPIs or Service Levels in schedule 4. The total potential **maximum volumes** of learners in this contract is 40 and the total potential **maximum contract** is [REDACTED]. The breakdown of this in each region of England is contained within the table in Schedule 9.
2. The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise between the Contractor and the DFE, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
3. The DFE may review the detailed costs set out in the Quotation to ensure that the Contract is value for money. Indexation shall not apply to the Charges
4. The Contractor shall be entitled to invoice the Charges following acceptance by the DFE of satisfactory completion of the Services and in accordance with payment milestones set out herein.
5. An accurate and complete Invoice for payment should be submitted to DFE within 30 Business Days of reaching each payment milestone unless an alternative arrangement has been agreed with the Contract Manager.
6. Invoices should be returned to email address: [wave2.skillsbootcamps@education.gov.uk](mailto:wave2.skillsbootcamps@education.gov.uk) copying in the Contract Manager.
7. For Eligible Learners who are current employees being supported by their employer the Contractor is expected to charge the employer 30% of the unit rate. These contributions will be monitored as part of this contract. For such Eligible Learners Contractors should only claim 70% of the unit rate at each payment milestone. As this contract relates to learners who are already part way through their training, you must ensure you check the payment status of the employer contribution with your DfE contract manager, as the employer contribution may have already been paid to the previous provider.
8. Contractors will be required to submit an updated data spreadsheet to support all claims for milestone payments. Invoices will not be processed without an accurate completed data collection spreadsheet to support the claim.
9. The final payment will only be paid for Eligible Learners who achieve an evidenced offer of a new job, role or new opportunity that utilises the new skills acquired through the Training within 6 months of completing the Training.
10. The Contractor will be able to submit claims for payment under this Contract up until 30th September 2023. Claims made after this date will not be valid and will not be processed or payable by the DFE.
11. Evidence to support the payment milestones will be agreed with the Contractor's Contract Manager.
12. All milestone payments to the Contractor will include verification of information provided to support claims made. The Contract Manager will identify a random sample of Eligible Learners and request supporting evidence to be presented alongside the claim and data collection spreadsheet.
13. DFE reserves the right to undertake further evidence sampling throughout the contract period to verify claims and provide assurance. This may include, but is not limited to, reviewing learner registration records, accreditation certification or digital reporting records, copies of subcontracts and directly contacting Eligible Learners.

14. DFE reserves the right to authenticate information provided by the Contractor and those in their supply chain for assurance purposes.
15. In cases where irregularities are identified, DFE reserves the right to carry out further checks and other remedial checks and use the provisions within the Contract to remedy any breach.

### **Payment milestones**

The table below shows how the payment milestones for the different Pathways are broken down. The percentage shown in the table below of the total prices for the relevant Pathway as set out in the Quotation at Schedule 9 will be paid upon achievement of the relevant milestone.

An explanation of the required elements of each milestone is set out in the Specification.

For the avoidance of doubt, upon completion and payment in respect of the final milestone for each pathway, no further Charges will be payable by DFE hereunder in respect of the relevant Learner.

### **Pathways A and B**

Stage	Pathways A and B Milestone 1 to 4	Pathways A and B Milestone 2 to 4	Pathways A and B Milestone 3 to 4
Milestone 2	45%		
Milestone 3	35%	75%	
Milestone 4	20%	25%	100%

### **Pathway D**

Stage	Pathway D Milestone 1 to 3	Pathway D Milestone 2 to 3
Milestone 2	75%	
Milestone 3	25%	100%

## **Schedule 4**

### **KPIs, Service Levels and Service Credits**

- 1 The objectives of the Service Levels are to:
  - 1.1 ensure that the Services are of a consistently high quality and meet the requirements of the DFE;
  - 1.2 provide a mechanism whereby the DFE can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the Services; and
  - 1.3 incentivise the Contractor to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

### **KEY PERFORMANCE INDICATORS (KPIs) AND SERVICE LEVELS (SLs)**

- 2 This schedule 4 sets out the KPIs and Service Levels against which the Contractor shall measure its performance.
- 3 The Contractor shall monitor its performance against of each of the KPIs and Service Levels in and send the DFE a report detailing the KPIs and Service Levels which were achieved in accordance with the provisions of this schedule 4.

### **PERFORMANCE STANDARDS/MEASURES**

- 4 The Contractor must meet the Performance Measure for each identified KPI as set out in table 1 below within the agreed Service Period (defined in Schedule 2).
- 5 If during a Service period the Contractor achieves a KPI/Service Level, no Service Credit ("reduction in total amount of charges payable to the Contractor") will accrue to the Contractor in respect of that KPI/Service Level.
- 6 The Contractor confirms that it has taken Performance Measures and Service Credits into account in calculating the Charges. Both Parties agree that the Performance Measures and Service Credits are a reasonable method of adjusting the Charges to reflect poor Contractor performance.
- 7 The Contractor will be expected to meet/comply with all Service Levels as set out within table 2 below.

**Table 1 KPIs Key Performance Indicators**

<b>KPI's</b>		
<b>New Skills</b>	Learners who successfully complete the Skills Bootcamp will have acquired new skills in HGV Driving.	<b>100%</b>
<b>Guaranteed Interview</b>	Interview must be for a HGV Driving job that matches the new skills acquired through the Skills Bootcamp on successful completion of the course and driving qualification	<b>100%</b>
<b>Career Progression</b>	Unemployed learners/independent employed learners: Should get a HGV Driving job in the category / level of their training within 6 months of completion.	<b>75%</b>
	Current employees being supported by their employers: Should get a HGV Driving job to the category / level of their training within 6 months of completion.	
<b>Referral to Alternative Opportunities</b>	Learners who are unsuccessful at post-completion interview should be referred to other job and training opportunities.	<b>100%</b>
<b>Learner Drop-Out Rates</b>	Robust recruitment and learner support processes must be in place to minimise learner drop-outs.	<b>&lt;= 30%</b>
<b>Employer Engagement</b>	Every Skills Bootcamp should be able to evidence Employer Engagement at the Design Stage, during the Delivery Stage and Post Skills Bootcamp Stage, supporting the learner into the improved outcome.	<b>100%</b>
<b>Employer Co-Funding</b>	Where they are training their own existing employees, all employers must co-fund the training with a cash contribution.	<b>=/&gt; 30% of Skills Bootcamp Cost</b>

**Table 2 Service Levels**

<b>Service Levels</b>	
<b>Employer Engagement</b>	Employers should be engaged and embedded in the design and development of bootcamps to meet their skills needs throughout the term of the contract. This will be monitored as part of this contract.
	Employers using the Skills Bootcamps to recruit new employees should be contributing in-kind to the delivery. Suppliers are expected to record and report on levels of in-kind contributions through their data returns.
<b>Recruitment &amp; Enrolment</b>	All training must be delivered flexibly to allow people currently in work, looking for work or with other responsibilities to participate.
	100% learners must be recruited using fair and open processes producing a cohort that reflects the diversity of local areas.
	Recruitment of participants for all Skills Bootcamps must be complete in a timely manner to ensure all Skills Bootcamps training delivery and interview offer concludes by 31 March 2022 (with the exception of Skills Bootcamps for HGV Driving with no prior experience of HGV driving i.e. pathways A-C which can continue delivery into FY 2022-23).
	As part of the recruitment process the Supplier must issue a Privacy notice to learners to support delivery of future evaluation activity. This will be reviewed as part of the contract monitoring.
<b>Subcontracting</b>	Lead Suppliers must have a written contract with their subcontractor. It must set out the respective responsibilities of both the institution and the subcontractor. The contract must entitle the institution to exercise management controls over the subcontractor's activity including access for representatives of either the institution or the funding body for audit and assurance purposes.
	The Authority recognises that arrangements in relation to sub-contracting may be subject to future change and may not be finalised until a later date. If the proposed supply chain changes at any time after submission of its response to the ITT, the Lead Supplier should inform the Authority immediately. The Authority reserves the right to reject sub-contractors for any reason.

**Schedule 5 Not used**

### **Schedule 6 Change Control Procedure**

- 1 The Parties acknowledge that minor changes to the Contract may be necessary to reflect operational and administrative procedures during the Term and that such minor changes may be agreed in writing between the Parties' respective contract managers.
- 2 The Contractor shall use reasonable endeavours to incorporate minor changes requested by the DFE within the current Charges and shall not serve a Contractor Notice of Change unless the change involves a demonstrable material increase to its costs or requires a material change to the Contract.
- 3 Either Party may request a Variation provided that such Variation does not amount to a material change.
4. The DFE may request a Variation by completing the Change Control Note and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Charges are required in order to implement the Variation within a reasonable time limit specified by the DFE. If the Contractor accepts the Variation, it shall confirm it in writing within 21 days of receiving the Change Control Note.
5. If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Charges, the DFE may allow the Contractor to fulfil its obligations under the Contract without Variation or if the Parties cannot agree to the Variation the Dispute will be determined in accordance with clause 36.
6. If the Contractor wishes to introduce a change to the Contract it may request a Variation by serving the Change Control Note on DFE.
7. The DFE shall evaluate the Contractor's proposed Variation in good faith, taking into account all relevant issues.
8. The DFE shall confirm in writing within 21 days of receiving the Change Control Note if it accepts or rejects the Variation.
9. The DFE may at its absolute discretion reject any request for a Variation proposed by the Contractor.

### Change Control Note

:

<b>Contract Number</b>		<b>DFE Contract / Programme Manager</b>
<b>Contractor</b>		<b>Original Contract Value (£)</b>
<b>Contract Start Date</b>		<b>Contract Expiry Date</b>

<b>Variation Requested</b>	
<b>Originator of Variation</b> (tick as appropriate)	<b>DFE</b> <input type="checkbox"/> <b>Contractor</b> <input type="checkbox"/>
<b>Date</b>	
<b>Reason for Variation</b>	
<b>Summary of Variation</b> (e.g., specification, finances, contract period)	
<b>Date of Variation commencement</b>	
<b>Date of Variation expiry</b> (if applicable)	
<b>Total Value of Variation £</b> (if applicable)	
<b>Payment Profile (if applicable)</b> e.g., milestone payments	
<b>Revised daily rate (if applicable)</b>	

Impact on original contract (if applicable)			
Supporting Information (please attach all supporting documentation for this Change Control)			
Terms and Conditions	Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect.		
<b>Variation Agreed</b>  <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <b>For the Contractor:</b>   Signature.....    Full Name.....    Title.....    Date..... </td> <td style="width: 50%; vertical-align: top;"> <b>For the DFE:</b>   Signature.....    Full Name.....    Title.....    Date..... </td> </tr> </table>		<b>For the Contractor:</b>  Signature.....   Full Name.....   Title.....   Date.....	<b>For the DFE:</b>  Signature.....   Full Name.....   Title.....   Date.....
<b>For the Contractor:</b>  Signature.....   Full Name.....   Title.....   Date.....	<b>For the DFE:</b>  Signature.....   Full Name.....   Title.....   Date.....		

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

<b>To be entered by the Commercial department:</b>			
Commercial Contact		Reference Number	
Date received		EC Reference	

## Schedule 7

### Data, Systems Handling and Security

#### Definitions

<b>“Data Loss Event”</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Processor 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;
<b>“DPA”</b>	Data Protection Act 2018;
<b>“Data Protection Impact Assessment”</b>	
<b>“Data Protection Legislation”</b>	an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA; all applicable UK law relating to the processing of personal data, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR. The UK GDPR and the EU GDPR are defined in section 3 of the Data Protection Act 2018;
<b>“Data Subject Request”</b>	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.
<b>“Controller”, “Processor”, “Processing”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”</b>	shall have the meanings given in the UK GDPR;
<b>“Law”</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;
<b>“Law Enforcement Processing”</b>	processing under Part 3 of the DPA;
<b>“Processor Personnel”</b>	employees, agents, consultants, and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;

**“Protective Measures”**

appropriate technical and organisational measures designed to ensure compliance with the obligations of the Parties arising under Data Protection Legislation and this Contract, 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 such measures adopted by it including those set out in the Contract; and

**“Sub-processor”**

any third Party appointed to process Personal Data on behalf of the Processor related to this Contract.

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, DFE is the Controller and the Contractor is the Processor. The only processing that the Processor is authorised to do is listed in Schedule 7 Annex 2 by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
  - (a) process that Personal Data only in accordance with Schedule 7 Annex 2 unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protective Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take take account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:

- (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 7);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - A. are aware of and comply with the Processor's duties under this clause;
    - B. (B) are subject to appropriate confidentiality undertakings with the Processor 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 Controller or as otherwise permitted by this Contract; and
    - D. have undergone adequate training in the use, care, protection, and handling of Personal Data;
  - (d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - (i) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA;
    - (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA) as determined by the Controller;
    - (iii) the Data Subject has enforceable rights and effective legal remedies;
    - (iv) the Processor 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 Controller in meeting its obligations); and
    - (v) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - (e) 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
  - (f) becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under

clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication, or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event;
- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the processing is not occasional;
- (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1 such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub processors.

1.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 working days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## Departmental Security Standards for Business Services and ICT Contracts

<p>“BPSS”</p> <p>“Baseline Personnel Security Standard”</p>	<p>means the Government’s HMG Baseline Personal Security Standard. Further information can be found at:</p> <p><a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a></p>
<p>“CCSC”</p> <p>“Certified Cyber Security Consultancy”</p>	<p>is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC’s standards.</p> <p>See website:</p> <p><a href="https://www.ncsc.gov.uk/scheme/certified-cyberconsultancy">https://www.ncsc.gov.uk/scheme/certified-cyberconsultancy</a></p>
<p>“CCP”</p> <p>“Certified Professional”</p>	<p>is a NCSC scheme in consultation with government, industry, and academia to address the growing need for specialists in the cyber security profession. See website:</p> <p><a href="https://www.ncsc.gov.uk/information/about-certifiedprofessional-scheme">https://www.ncsc.gov.uk/information/about-certifiedprofessional-scheme</a></p>
<p>“CPA”</p> <p>“Commercial Product Assurance”</p> <p>(formerly called “CESG Product Assurance”)</p>	<p>is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. See website:</p> <p><a href="https://www.ncsc.gov.uk/scheme/commercialproduct-assurance-cpa">https://www.ncsc.gov.uk/scheme/commercialproduct-assurance-cpa</a></p>
<p>“Cyber Essentials”</p> <p>“Cyber Essentials Plus”</p>	<p>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.</p> <p>There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to these providers:</p> <p><a href="https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body">https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body</a></p>
<p>“Data”</p> <p>“Data Controller”</p> <p>“Data Protection Officer”</p> <p>“Data Processor”</p> <p>“Personal Data”</p> <p>“Personal Data requiring Sensitive Processing”</p> <p>“Data Subject”, “Process” and “Processing”</p>	<p>shall have the meanings given to those terms by the Data Protection Act 2018</p>

<p>"Department's Data"</p> <p>"Department's Information"</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <p>(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:</p> <p>(i) supplied to the Contractor by or on behalf of the Department; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;</p>
<p>"DfE"</p> <p>"Department"</p>	<p>means the Department for Education</p>
<p>"Departmental Security Standards"</p>	<p>means the Department's security policy or any standards, procedures, process, or specification for security that the Contractor is required to deliver.</p>
<p>"Digital Marketplace / G-Cloud"</p>	<p>means the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.</p>
<p>"End User Devices"</p>	<p>means the personal computer or consumer devices that store or process information.</p>
<p>"Good Industry Practice"</p> <p>"Industry Good Practice"</p>	<p>means the exercise of that degree of skill, care, prudence, efficiency, foresight, and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>"Good Industry Standard"</p> <p>"Industry Good Standard"</p>	<p>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.</p>
<p>"GSC"</p> <p>"GSCP"</p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>
<p>"HMG"</p>	<p>means His Majesty's Government</p>
<p>"ICT"</p>	<p>means Information and Communications Technology (ICT) and is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution</p>
<p>"ISO/IEC 27001" "ISO 27001"</p>	<p>is the International Standard for Information Security Management Systems Requirements</p>
<p>"ISO/IEC 27002" "ISO 27002"</p>	<p>is the International Standard describing the Code of Practice for Information Security Controls.</p>
<p>"ISO 22301"</p>	<p>is the International Standard describing for Business Continuity</p>
<p>"IT Security Health Check (ITSHC)"</p> <p>"IT Health Check (ITHC)"</p> <p>"Penetration Testing"</p>	<p>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.</p>

“Need-to-Know”	means the Need-to-Know principle employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.
“NCSC”	The National Cyber Security Centre (NCSC) is the UK government’s National Technical Authority for Information Assurance. The NCSC website is <a href="https://www.ncsc.gov.uk">https://www.ncsc.gov.uk</a>
“OFFICIAL” “OFFICIAL-SENSITIVE”	the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP).  the term ‘OFFICIAL–SENSITIVE is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the GSCP.
“RBAC” “Role Based Access Control”	means Role Based Access Control. A method of restricting a person’s or process’ access to information depending on the role or functions assigned to them.
“Storage Area Network” “SAN”	means an information storage system typically presenting block based storage (i.e., disks or virtual disks) over a network interface rather than using physically connected storage.
“Secure Sanitisation”	means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.  NCSC Guidance can be found at: <a href="https://www.ncsc.gov.uk/guidance/securesanitisation-storage-media">https://www.ncsc.gov.uk/guidance/securesanitisation-storage-media</a>  The disposal of physical documents and hardcopy materials advice can be found at: <a href="https://www.cpni.gov.uk/secure-destruction">https://www.cpni.gov.uk/secure-destruction</a>
“Security and Information Risk Advisor” “CCP SIRA” “SIRA”	means the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: <a href="https://www.ncsc.gov.uk/articles/about-certifiedprofessional-scheme">https://www.ncsc.gov.uk/articles/about-certifiedprofessional-scheme</a>
“Senior Information Risk Owner”	means the Senior Information Risk Owner (SIRO)
“SIRO”	responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arms length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties.

<p>“SPF”</p> <p>“HMG Security Policy Framework”</p>	<p>means the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently, and securely.</p> <p><a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a></p>
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- 1.1 The Contractor shall be aware of and comply the relevant [HMG security policy framework](#), [NCSC guidelines](#) and where applicable DfE Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 1.2 If the provision of the Services requires the Contractor to process Departmental Data which is classified as OFFICIAL, OFFICIAL-SENSITIVE or Personal Data, the Contractor shall implement such additional measures as agreed with the Department from time to time in order to ensure that such information is safeguarded in accordance with the applicable legislative and regulatory obligations.
- 1.3 Where clause 1.2 above has not been met, the Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4 The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service and will handle all data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 1.5 Departmental Data being handled in the course of providing an ICT solution or service must be separated from all other data on the Contractor’s or sub-contractor’s own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required in line with clause 1.14.
- 1.6 The Contractor shall have in place and maintain physical security to premises and sensitive areas in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g., door access), CCTV, alarm systems, etc.
- 1.7 The Contractor shall have in place and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Departmental Data. This policy should include appropriate segregation of duties and if applicable role based access controls (RBAC).

- 1.8 The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to:
- physical security controls;
  - good industry standard policies and processes;
  - malware protection; boundary access controls including firewalls;
  - maintenance and use of fully supported software packages in accordance with vendor recommendations;
  - software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
  - user access controls, and;
  - the creation and retention of audit logs of system, application and security events.
- 1.9 The Contractor shall ensure that any departmental data (including email) transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 1.10 The Contractor shall ensure that any departmental data which resides on a mobile, removable, or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the department except where the department has given its prior written consent to an alternative arrangement.
- 1.11 The Contractor shall ensure that any device which is used to process departmental data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-devicesecurity> and <https://www.ncsc.gov.uk/collection/end-user-devicesecurity/eud-overview/eud-security-principles>.
- 1.12 Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- The term 'lock and key' is defined as: "securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user's sole control and to which they hold the keys".
- 1.13 When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- The term 'under cover' means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when outside official premises or buildings.
- 1.14 In the event of termination of contract due to expiry, liquidation or non-performance, all information assets provided, created or resulting from the

service shall not be considered as the supplier's assets and must be returned to the DFE and written assurance obtained from an appropriate officer of the supplying organisation that these assets regardless of location and format have been fully sanitised throughout the organisation in line with clause 1.15.

- 1.15 In the event of termination, equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored by the Contractor must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC approved product or method.

Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area Network (SAN) or on shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until such time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.

Evidence of secure destruction will be required in all cases.

- 1.16 Not Used.

- 1.17 All Contractor or sub-contractor employees who handle Departmental Data shall have annual awareness training in protecting information.

- 1.18 The Contractor shall, as a minimum, have in place robust business continuity arrangements and processes including IT disaster recovery plans and procedures 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. The Contractor, upon request, will provide evidence of the effectiveness business continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.

- 1.19 Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data handled in the course of providing this service shall be recorded as an incident. This includes any noncompliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution.

Incidents shall be reported to the DFE immediately, wherever practical, even if unconfirmed or when full details are not known, but always within 24 hours of discovery. If incident reporting has been delayed by more than 24 hours, the contractor should provide an explanation about the delay.

Incidents shall be reported through the Department's nominated system or service owner.

Incidents shall be investigated by the contractor with outcomes being notified to the Department.

- 1.20 Not Used.

- 1.21 The Contractor or sub-contractors providing the service will provide the Department with full details of any actual or future intent to develop, manage, support, process, or store Departmental Data outside of the UK mainland. The Contractor or sub-contractor shall not go ahead with any such proposal without the prior written agreement from the Department.

- 1.22 The Department reserves the right to audit the Contractor or subcontractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any sub-contractors', compliance with the clauses contained in this Section.
- 1.23 Not Used
- 1.24 Not Used
- 1.25 The Contractor shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party suppliers, subcontractors or partners who could potentially access Departmental Data in the course of providing this service.
- 1.26 The Contractor should perform a technical risk assessment on the service supplied and be able to demonstrate what controls are in place to address those risks.

## SCHEDULE 7 ANNEX 2

### Processing, Personal Data and Data Subjects

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

- 1 The contact details of the Controller's Data Protection Officer are: [REDACTED]
- 2 The contact details of the Processor's Data Protection Officer are: [REDACTED]
- 3 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, DFE is the Controller and the Contractor is the Processor in accordance with Schedule 7 Clause 1.1.
Subject matter of the processing	The processing is needed to ensure that the Processor can effectively deliver the Contract to provide the Services in the form of completing Training for Eligible Learners.
Duration of the processing	During the full Term of the Contract, and for a period of 12 months immediately after termination or expiry.
Nature and purposes of the processing	Collection, recording, structuring, organisation, use, disclosure by transmission, storage, otherwise making available, retrieval, consultation of personal data on Learners and Eligible Learners to help effectively administer the Training programme and to support with the evaluation of the programme.
Type of Personal Data	<ul style="list-style-type: none"><li>• national insurance number,</li><li>• first name,</li><li>• surname,</li><li>• postcode</li><li>• telephone number</li><li>• address</li><li>• date of birth</li></ul> <p>The special category data we will be processing includes:</p> <ul style="list-style-type: none"><li>• gender</li><li>• disability and</li><li>• ethnicity</li></ul>
Categories of Data Subject	Learners, Eligible Learners and Employers

International transfers and legal gateway	Personal data may be stored and accessed in the UK only.
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	Personal data will be kept for a maximum of three years after which point it will be securely destroyed.

## **Schedule 7 Annex 3 Joint Controller Agreement**

Not Applicable

**Schedule 8**

**[not used]**

## Schedule 9

### Appointed Area:

Ultima	Maximum Value	Maximum Learners					
		40					
			North West			West Midlands	
			Learners	Price	Total	Learners	Price
Pathway A	Milestone 1 to 4	2				0	
	Milestone 2 to 4	3				0	
	Milestone 3 to 4	2				0	
Pathway B	Milestone 1 to 4	5				5	
	Milestone 2 to 4	5				15	
	Milestone 3 to 4	2				1	
Pathway D	Milestone 1 to 3	0					
	Milestone 2 to 3	0					
		19				21	

### Note:

We reserve the right to add additional learners to the 'eligible learner' list who have completed up to at least MS1 (or the equivalent) with a supplier that has had a contract terminated. Suppliers will be notified and given the option to take on these learners if there is capacity within their contracts.

If employer co-funded learners are added to the list, the rates of funding will be confirmed by the Department for Education before the supplier agrees to take the learner on. The rates in most cases will be contributions of 30% of the total cost for larger employers and 10% of SMEs, the rates will be assessed taking into consideration the payments made to the previous supplier.

### Service Commencement Date:

30<sup>th</sup> January 2023

### Quotation:

