

Terms and Conditions

Attachment 10

**Business Case Accreditation, Examination and Training Services**

Annex**1**

**Terms and Conditions of Contract for Services**

1. Interpretation
   1. In these terms and conditions:

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| “Accreditation” | means the accreditation by the Supplier of an individual, a training organisation, an individual training course (including its documentation), an approved trainer, a consultancy organisation, a registered consultant, any Derivative Materials or any other body, individual or material in accordance with the requirements of Annex 3 and “**Accrediting**” shall be similarly construed; |
| “Accreditation Materials” | means from time to time collectively the Existing Accreditation Materials and the New Accreditation Materials and “**Accreditation Material**” means any one material from either of these two classes; |
| “Accreditation Material Translations” | means any translation into any language other than English comprised within the definition of New Accreditation Materials, and included within this Agreement pursuant to paragraph  2 of Annex 3 and paragraph 5 of Annex 9, in each case as may be modified or revised by the Parties in accordance with this Agreement; |
| “ACO” or “Accredited Consultancy Organisation” | means any consultancy organisation from time to time accredited under this Agreement; |
| "Acquired Rights Directive" | means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time; |
| “Admin Fees” | means the administrative costs incurred by the Authority in dealing with MI Failures; |
| "Affiliates" | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; |
| “Agreement” | means the contract between (i) the Authority acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes; |
| “Agreement Materials” | means the Accreditation Materials and the Publications from time to time in existence and “**Agreement Material”** shall mean any particular material from either of these two classes; |
| “Annual Marketing Plan” | means the latest version of the annual marketing plan described in paragraph 5.20 ‘Marketing and Promotional Services’ in Attachment 10 (Specification); |
| “Approval” | means the written consent of the Authority and "**Approve**" and "**Approved**" shall be construed accordingly; |
| “Approval in Principle” | has the meaning set out in paragraph 5.2 of Annex 9; |
| “ATO” or “Accredited Training Organisation” | means any training organisation from time to time accredited under this Agreement (also known as an “**ACP”** or an “**Accredited Course Provider”**); |
| “Auditor” | means:  a) the Authority’s internal and external auditors;  b) the Authority’s statutory or regulatory auditors;  c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;  d) HM Treasury or Cabinet Office;  e) any party formally appointed by the Authority to carry out audit or similar review functions; and  f) successors or assigns of any of the above. |
| “Authority” | HM Treasury working in partnership with the Welsh Government; |
| "Authority Assets" | means the Authority’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision of the Services; |
| “Authority Background IPR” | means:  a) IPRs owned by the Authority before the Commencement Date of this Agreement as set out in the Award Letter, including IPRs contained in any of the Authority’s Know-How, documentation, processes, software and procedures;  b) IPRs created by the Authority independently of this Agreement; and/or  c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement; |
| “Authority Brands” | means the unregistered and registered trademarks and brands listed in part 2 of Annex 5 (IPR); |
| “Authority Commission” | means a New Publication commissioned and managed as an Authority commission as described in Annex 9; |
| "Authority's Confidential Information" | means:  a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Authority (including all Authority Background IPR and Project Specific IPR);  b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Authority’s attention or into the Authority’s possession in connection with this Agreement; and  information derived from any of the above; |
| "Authority Data" | means:  a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Authority’s Confidential Information, and which:  i) are supplied to the Supplier by or on behalf of the Authority; or  ii) the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or  iii) any Personal Data for which the Authority is the Controller; |
| “Authority Materials” | are defined in paragraph 1.5 of Annex 5; |
| “Authority Premises” | means premises owned, controlled or occupied by the Authority which are made available for use by the Supplier or its Subcontractors for provision of the Services (or any of them); |
| "Authority Property"  "Authority Revenue" or “Revenue” | means the property, other than real property and IPR, including any equipment issued or made available to the Supplier by the Authority in connection with this Agreement;  means the Revenue share given to the Authority by the Supplier in accordance with Annex 13. This is then held in the Programme Fund. |
| “Award Letter” | means the letter from the Authority to the Supplier printed above these terms and conditions; |
| “Business Case Accreditation, Examination and Training Services Portfolio” | means the portfolio set out in Part 2 of Annex 3; |
| “Business Case Guidance” | means the guidance published by the Authority and the Welsh Government on their website, https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-governent; |
| “Central Government Body” | means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:  a) Government Department;  b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);  c) Non-Ministerial Department; or  d) Executive Agency; |
| "Change of Control" | means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010; |
| “Charges” | means the charges for the Services as specified in the Award Letter and at Annex 13; |
| “Confidential Information” | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential; |
| “Contract Materials” | means the Accreditation Materials and the Publications from time to time in existence, and Contract Material shall mean any particular material from either of these two classes; |
| “Controller” | either:  a) for the purposes of paragraph 13 in Annex 1, has the meaning given to it in the GDPR; or  b) means the Controller of His Majesty's Stationery Office, as King’s Printer and King’s Printer for Scotland, which currently operates from within the organisation known as the Office of Public Sector Information, part of the National Archives,  as the context requires; |
| “Core Content” | means any and all written and other content from time to time comprised within any Core Reference Materials; |
| “Core Reference Materials” | means the Existing Publications; together with all other works (whether printed or recorded on paper, any electronic, digital or audio media or otherwise and whether distributed in the form of books, electronically, in any digital medium, online or otherwise) which the Authority from time to time decides (by notifying the Supplier in writing) shall form part of the core reference materials of the Business Case Accreditation, Examination and Training Services Portfolio (as appropriate) for the purposes of this Agreement, but subject to the removal by the Authority from time to time of any such publications from this Agreement (by notifying the Supplier in writing); |
| “Costs” | mean the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:  a) the cost to the Supplier or the Subcontractor (as the context requires), calculated per Staff Day, of engaging the Staff, including:  i) base salary paid to the Staff;  ii) employer’s national insurance contributions;  iii) pension contributions;  iv) car allowances;  v) any other contractual employment benefits;  vi) staff training;  vii) work place accommodation;  viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within (b) below); and  ix) reasonable recruitment costs, as agreed with the Authority;  b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Authority or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;  c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Goods and/or Services; |
| “Crown IPR” | means all copyrights and database rights for the time being held by His Majesty the King on behalf of the Crown; |
| "CRTPA" | means the Contracts (Rights of Third Parties) Act 1999; |
| “Data Protection Legislation” | means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy; |
| “Data Protection Impact Assessment” | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; |
| “Data Loss Event” | means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach; |
| “Data Subject Access Request” | means 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; |
| “Deductions” | means any deduction which the Authority is paid or is payable under this Agreement; |
| “Derivative Materials” | means all works (whether printed or recorded on paper, any electronic, digital, audio media or otherwise and whether distributed in the form of books, electronically, in any digital medium, online or otherwise) which are supporting or ancillary to the Core Reference Materials (but excluding the Core Reference Materials themselves) which the Parties from time to time agree pursuant to Annex 9 shall form part of the derivative materials of the Business Case Accreditation, Examination and Training Services Portfolio (as appropriate) for the purposes of this Agreement, in each case as may be modified or revised by the Parties from time to time in accordance with this Agreement and “**Derivative Material**” means any one of them; |
| “Development Description” | shall have the meaning ascribed to it in Annex 9; |
| “Development Proposal” | means a written proposal which includes an appropriate business case made by either of the Parties to the other in respect of a potential opportunity identified for the development, revision or modification of any Agreement Material; |
| “Development Timetable” | shall have the meaning ascribed to it in Annex 9; |
| “Dispute Resolution Procedure” | means the procedure set out at clause 19 of this Agreement; |
| “Domain Names” | means those domain names listed at Part 3 of Annex 5; |
| “DPA” | means the Data Protection Act 2018, once enacted and in force. Until that point “DPA” shall mean the Data Protection Act 1998; |
| “Employee Liabilities” | means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:  a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;  b) unfair, wrongful or constructive dismissal compensation;  c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;  d) compensation for less favourable treatment of part-time workers or fixed term employees;  e) outstanding debts and unlawful deduction of wages including any PAYE and national insurance contributions in relation to payments made by the Authority or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer date;  f) claims whether in tort, contract or statute or otherwise;  any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; |
| "Employment Regulations" | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive; |
| “Examination” | means any examination provided by the Supplier pursuant to this Agreement relating to any Product; |
| “Examination Services” | means the examinations services specified in Annex 3; |
| "Exclusive Assets" | means those Supplier Assets used by the Staff which are used exclusively in the provision of the Services; |
| "Exit Information" | has the meaning given to it in paragraph 4.1 of Annex 7; |
| "Exit Manager" | means the person appointed by each Party pursuant to paragraph 3.4 of Annex 7 for managing the Parties' respective obligations under Annex 7; |
| “Exit Plan” | means the exit plan described in paragraph 5; |
| “Expiry Date” | means the date for expiry of the Agreement as set out in the Award Letter; |
| “Exploit” | shall have the meaning set out at paragraph 8 of the Award Letter; |
| “Existing Accreditation Materials” | means those accreditation materials comprising the core reference materials of the Business Case Accreditation, Examination and Training Services Portfolio (as appropriate) as at the date of this Agreement as set out in the Award Letter, including (without limitation) those listed in Part 2 of Annex 3 and “**Existing Accreditation Material**” shall mean any one of them; |
| “Existing Agreement Materials” | means the Existing Accreditation Materials and the Existing Publications from time to time in existence; |
| “Existing Publications” | means those publications comprising the core reference materials of the Business Case Accreditation, Examination and Training Services Portfolio (as appropriate) as at the date of this Agreement as set out in the Award Letter, including (without limitation) those listed in Part 2 of Annex 3 and “**Existing Publication**” shall mean any one of them; |
| “Fair Deal Employees” | means those Transferring Authority Employees who are on the Relevant Transfer date entitled to the protection of New Fair Deal; |
| “FOIA” | means the Freedom of Information Act 2000; |
| "Former Supplier" | means a supplier supplying the services to the Authority before the Relevant Transfer date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any subcontractor of any such subcontractor); |
| “GDPR” | means the General Data Protection Regulation (Regulation (EU) 2016/679); |
| “Good Industry Practice”  “Guaranteed Agreement”  “Guaranteed Obligations” | means standards, practices, methods and procedures conforming to the Law and the exercise of 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 within the relevant industry or business sector;  means the Agreement made between the Beneficiary and the Supplier;  means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement; |
| "Implementation Plan” | means the plan for implementation of the Services set out at Annex 6; |
| “Information” | has the meaning given under section 84 of the FOIA; |
| "Intellectual Property Rights" or "IPR" | means  a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;  b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and  all other rights having equivalent or similar effect in any country or jurisdiction; |
| “Joint Management Board” or “JMB” | means the Business Case Accreditation, Examination and Training Services Joint Management Board, as detailed at paragraph 2.1 of Annex 9; |
| “Key Personnel” | means any persons specified as such in the Award Letter or otherwise notified as such by the Authority to the Supplier in writing; |
| "Key Sub-Contract" | means each Sub-Contract with a Key Subcontractor; |
| "Key Subcontractor" | 1. means any Subcontractor: 2. listed in Annex 12 Part B (Key Subcontractors); 3. which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or   with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate contract Charges forecast to be payable under this contract; |
| "Know-How"  “Key Performance Indicators” or “KPI” | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party’s possession before the commencement date of this Agreement as set out in the Award Letter;  Means the measure by which your overall performance under this contract shall be monitored and managed as agreed by the Authority and set out in the Specification. |
| “Law” | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply; |
| “LED” | means the Law Enforcement Directive (Directive (EU) 2016/680); |
| “Legends” | means the legend(s) "Official Accreditor of the HM Treasury Business Case Accreditation, Examination and Training Services Portfolio"; |
| “Maintenance” | shall have the meaning ascribed to it in Annex 9; |
| “Mandatory Development Proposal” | shall have the meaning ascribed to it in Annex 9; |
| “Staff Day” | means 7.5 staff Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; |
| “Staff Hours” | means the hours spent by the Staff properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks; |
| “Management Information” | means the management information specified in Annex 10 (Reporting and Open Book Provisions); |
| “Marketing Material” | means any marketing or promotional material for any of the Services or any Agreement Material produced from time to time by the Supplier; |
| “MI Failure” | means when an MI Report:  a) contains any material errors or material omissions or missing mandatory information; or  b) is not submitted by the reporting date (including where a Nil Return (as defined in Annex 10) should have been filed); |
| “MI Report” | means a report containing Management Information submitted to the Authority in accordance with Annex 10 (Reporting and Open Book Provisions); |
| “MI Reporting Requirements” | means the requirements for reporting set out in Part 2 of Annex 10, setting out the information the Supplier is required to provide to the Authority; |
| “Milestone” | means an event or task described in the Implementation Plan; |
| “Month” | means a calendar month and “Monthly” shall be interpreted accordingly; |
| "Net Book Value" | means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of even date with this Agreement; |
| “New Accreditation Materials” | mean any materials from time to time created and/or used by the Supplier in the performance of the Services, with the exception of:  the Existing Accreditation Materials (other than any revisions, translations and/or modifications made from time to time to the Existing Accreditation Materials); and  (b) the Publications,  which are included within this Agreement from time to time pursuant to Annex 9 and including potentially, without limitation, any examination papers, question papers, marking schemes, any Syllabus and all materials related or ancillary thereto (and including all translations into any language other than English of the same), in each case as may be modified or revised in accordance with this Agreement and “New Accreditation Material” means any one of them; |
| “New Agreement Materials” | means the New Accreditation Materials and the New Publications from time to time in existence; |
| “New Fair Deal” | the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer date; |
| “New Publications” | means:  a) all revisions and/or modifications to the Existing Publications; and  b) all new, revised and/or modified Derivative Materials and Publication Translations;  other than the Existing Publications, which are included within this Agreement from time to time pursuant to Annex 9 and “New Publication” means any one of them; |
| “Non-Accepted Material” | shall have the meaning ascribed to it in Annex 9; |
| "Non-Exclusive Assets" | means those Supplier Assets (if any) which are used by the Staff in connection with the Services but which are also used by the Staff for other purposes; |
| “Non-Mandatory Development Proposal” | shall have the meaning ascribed to it in Annex 9; |
| “Official Publisher” | means the publisher of materials to support the functions of the contract, as agreed by the Authority in the JMB; |
| “Open Book Data” | means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of this Agreement, including details and all assumptions relating to:  a) the Supplier’s costs broken down against each Service including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Services;  b) operating expenditure relating to the provision of the Services including an analysis showing:  i) the unit costs and quantity of any consumables and bought in goods and/or services;  ii) manpower resources broken down into the number and grade/role of all Staff (free of any contingency) together with a list of agreed rates against each manpower grade; and  iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier’s Profit Margin;  c) overheads;  d) all interest, expenses and any other third-party financing costs incurred in relation to the provision of the Services;  e) the Supplier Profit achieved over the Term and on an annual basis;  f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier  g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and  h) the actual Costs profile for each Month; |
| “Overhead” | means those amounts which are intended to recover a proportion of the Supplier’s or the relevant Subcontractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Staff and accordingly included within (a) of the definition of “Costs”; |
| “Party” | means the Supplier or the Authority (as appropriate) and “Parties” shall mean both of them; |
| “Personal Data” | has the meaning given to it in paragraph 13 of Annex 1; |
| “Product” | means any product within the Business Case Accreditation, Examination and Training Services Portfolio; |
| “Product Brands” | means the unregistered and registered trademarks and brands listed in part 2 of Annex 5 (IPR); |
| “Prohibited Act” | means any of the following:  a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or any other public body 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 this Agreement;  c) committing any offence:  i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or  ii) under legislation or common law concerning fraudulent acts; or  iii) defrauding, attempting to defraud or conspiring to defraud the Authority or other public body; or  iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK. |
| "Project Specific IPR" | means:  a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or  b) IPR in or arising as a result of the performance of the Supplier’s obligations under this Agreement and all updates and amendments to the same;  but shall not include the Supplier Background IPR; |
| "Programme Fund”  “Protective Measures” | held by the contract or on behalf of the Authority and is managed at the direction of the Authority it consists of the Authority Revenue which accrues to the Authority from its share of examination fees or fees from any other agreed source. This fund will be used at the Authorities’ discretion.  means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it; |
| “Publication Translation” | means a translation into any language other than English of any Core Reference Material or Derivative Material in whatever media, produced and included within this Agreement pursuant to Annexes 3 (Translations) and 9 (Approval Procedures), in each case as may be modified or revised by the Parties in accordance with this Agreement |
| “Publications” | means from time to time collectively the Existing Publications and the New Publications and “**Publication”** means any one material from either of these two classes; |
| “Purchase Order Number” | means the Authority’s unique number relating to the supply of the Services; |
| “Quality Standards” | means such standards of quality as the Authority may adopt from time to time as agreed by the Business Case Accreditation, Examination and Training Services Standards Board; |
| “Quality Survey”  “Quarter” | means both the survey responses, and survey the Supplier shall design and issue to training organisations and individuals undertaking examinations and associated training in order to understand and monitor customer satisfaction;  means any period of 3 Months which falls sequentially from the 1st of the Month following the date of this Agreement; |
| "Registers" | means the register and configuration database referred to in paragraphs 2.1.1 and 2.1.2 of Annex 7; |
| “Relevant Owner” | means the Authority or the Supplier as the context requires; |
| “Relevant Portfolio” | means the Business Case Accreditation, Examination and Training Services Portfolio, as the context so requires |
| “Relevant Transfer” | means a transfer of employment to which the Employment Regulations applies; |
| “Removal Timetable” | shall have the meaning ascribed to it in Annex 9; |
| "Replacement Services" | means any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the Expiry Date of this Agreement as set out in the Award Letter, whether those services are provided by the Authority internally and/or by any third party; |
| "Replacement Subcontractor" | means a subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer date (or any subcontractor of any such subcontractor); |
| "Replacement Supplier" | means any third-party provider of Replacement Services appointed by or at the direction of the Authority from time to time or where the Authority is providing Replacement Services for its own account, shall also include the Authority; |
| “Reporting Date” | means the 7th day of each Quarter following the Quarter to which the relevant Management Information relates, or such other date as may be agreed between the Parties; |
| “Request for Information” | has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply); |
| “Schemes” | the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014; |
| “Services” | means the services to be supplied by the Supplier to the Authority under the Agreement; |
| “Services Data” | means any data from time to time held or stored within the Supplier Database |
| "Service Transfer"  “Service Level Performance Criterion”  “Service Level Performance Measure” | means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;  means the criteria which define the subject of the Service Level Performance Measure as set out by the Authority in the Specification.  means the levels which the Supplier’s delivery performance will be measured against as set out by the Authority in the Specification. |
| “Sites” | means any premises (including the Authority Premises, the Supplier’s premises or third-party premises) from, to or at which:  a) the Services are (or are to be) provided; or  b) the Supplier manages, organises or otherwise directs the provision or the use of the Services; |
| “Specification” | means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter; |
| “Specific Change in Law” | means a change in Law which relates specifically to the business of the Authority and which would not affect a comparable Supplier; |
| “Staff” | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement; |
| “Staff Vetting Procedures” | means vetting procedures that accord with good industry practice or, where requested by the Authority, the Authority’s procedures for the vetting of personnel as provided to the Supplier from time to time; |
| “Staffing Information” | in relation to all persons identified on the Supplier's Provisional Staff List or Supplier's Final Staff List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:  a) their ages, dates of commencement of employment or engagement, gender and place of work;  b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;  c) the identity of the employer or relevant contracting Party;  d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;  e) their wages, salaries, bonuses and profit sharing arrangements as applicable;  f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;  g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);  h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long-term absence;  i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and  j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations; |
| “Start Date” | means the date of signature of this Agreement set out in point 4 of the contract Award Letter; |
| “Sub-Licenced Crown IPR” | has the meaning given to it in paragraph 3.2 of Annex 5; |
| "Sub-Contract" | 1. means any contract or agreement (or proposed contract or agreement) pursuant to which a third party: 2. provides the Services (or any part of them); 3. provides facilities or services necessary for the provision of the Services (or any part of them); and/or   is responsible for the management, direction or control of the provision of the Goods and/or Services (or any part of them); |
| "Subcontractor" | means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person; |
| “Sub-Processor” | means any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement; |
| “Supplier” | means the person named as Supplier in the Award Letter; |
| "Supplier Assets" | means all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets; |
| "Supplier Background IPR" | means  a) Intellectual Property Rights owned by the Supplier before the commencement date of this Agreement as set out in the Award Letter, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or  b) Intellectual Property Rights created by the Supplier independently of this Agreement; |
| “Supplier Commission” | means an Agreement Material commissioned and managed as a Supplier commission as described in Annex 9; |
| “Supplier Database” | means the database which is to be established and maintained by the Supplier recording details of candidates who are about to take, have taken and who have passed or otherwise any Examination, and any other data as further detailed in Annex 3; |
| "Supplier Equipment" | means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Authority) in the performance of its obligations under this Agreement; |
| “Supplier's Final Staff List” | a list provided by the Supplier of all Staff who will transfer under the Employment Regulations on the Service Transfer date; |
| “Supplier IPR” | is set out in paragraph 1.8 of Annex 5; |
| “Supplier Profit” | means, in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone; |
| “Supplier Profit Margin” | means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Agreement Charges over the same period or in relation to the relevant Milestone and expressed as a percentage; |
| “Supplier's Provisional Staff List” | a list prepared and updated by the Supplier of all Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier; |
| “Supplier’s Quality Manual” | means any such quality manual of the Supplier supplied pursuant to this Agreement and approved by the Authority, as the same may subsequently be amended from time to time by Agreement between the Parties; |
| “Syllabus” | means any syllabus which currently exists or which is provided and managed by the Supplier pursuant to this Agreement which relates to any Product within the Business Case Accreditation, Examination and Training Services Portfolio (as appropriate); |
| “Term” | means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement; |
| "Termination Assistance" | means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Authority pursuant to the Termination Assistance Notice; |
| "Termination Assistance Notice" | has the meaning given to it in paragraph 6.1 of Annex 7; |
| "Termination Assistance Period" | means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of Annex 7; |
| "Third Party IPR" | means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Services; |
| “Trade Marks” | means the Authority Brands and the Product Brands and “Registered Trade Marks” means all registered trade mark rights from time to time subsisting in respect of any of the foregoing; |
| "Transferable Assets" | means those of the Exclusive Assets which are capable of legal transfer to the Authority; |
| "Transferable Contracts" | means the Sub-Contracts, licences for Supplier’s Background IPR, Project Specific IPR, licences for Third Party IPR or other agreements which are necessary to enable the Authority or any Replacement Supplier to provide the Services or the Replacement Services, including in relation to licences all relevant documentation; |
| “Transferring Assets” | has the meaning given to it in paragraph 9.2.1 of Annex 7; |
| "Transferring Contracts" | has the meaning given to it in paragraph 9.2.3 of Annex 7. |
| “Transferring Authority Employees” | those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer date; |
| "Transferring Supplier Employees" | means those Staff to whom the Employment Regulations will apply on the Service Transfer date. |
| “Translations” | means from time to time collectively the Accreditation Materials Translations and the Publication Translations and “Translation” means any one translation from either of these two classes; |
| "Valid Invoice" | means an invoice issued by the Authority to the Supplier that complies with the invoicing procedure in Annex 13. |
| "Variation" | has the meaning given to it in Annex 8; |
| “Variation Form” | means the form set out at Part 2 of Annex 8; |
| “Variation Procedure” | means the procedure set out at Part 1 of Annex 8; |
| “VAT” | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and |
| “Working Day” | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

* 1. In these terms and conditions, unless the context otherwise requires:
     1. references to numbered clauses are references to the relevant clause in these terms and conditions;
     2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
     3. the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
     4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
     5. the word ‘including’ shall be understood as meaning ‘including without limitation’.

1. Basis of Agreement
   1. The Award Letter constitutes an offer by the Authority to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
   2. The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Authority of a copy of the Award Letter countersigned by the Supplier within 7 days of the date of the Award Letter.
2. Supply of Services
   1. In consideration of the Authority’s agreement to pay the Charges, the Supplier shall supply the Services to the Authority for the Term subject to and in accordance with the terms and conditions of the Agreement.
   2. In supplying the Services, the Supplier shall:
      1. co-operate with the Authority in all matters relating to the Services and comply with all the Authority’s instructions;
      2. perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;
      3. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Agreement;
      4. ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
      5. comply with all applicable laws; and
      6. provide all equipment, tools and vehicles and other items as are required to provide the Services.
   3. The Authority may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Authority and the Supplier.
3. Term
   1. The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
   2. The Authority may extend the Agreement by two (2) individual periods of two (2) years by giving not less than 3 months’ notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.
4. Premises and equipment
   1. If necessary, the Authority shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Authority’s premises by the Supplier or the Staff shall be at the Supplier’s risk.
   2. If the Supplier supplies all or any of the Services at or from the Authority’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Authority’s premises, remove the Supplier’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Authority’s premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Authority’s premises or any objects contained on the Authority’s premises which is caused by the Supplier or any Staff, other than fair wear and tear.
   3. If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Authority may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
   4. The Authority shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Authority’s premises the Supplier shall, and shall procure that all Staff shall, comply with all the Authority’s security requirements.
   5. Where all or any of the Services are supplied from the Supplier’s premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Authority in writing.
   6. Without prejudice to clause 3.2.6, any equipment provided by the Authority for the purposes of the Agreement shall remain the property of the Authority and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Authority on expiry or termination of the Agreement.
   7. The Supplier shall reimburse the Authority for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Authority shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Authority is notified otherwise in writing within 5 Working Days.
5. Staff and Key Personnel
   1. If the Authority reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
      1. refuse admission to the relevant person(s) to the Authority’s premises;
      2. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
      3. require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Authority to the person removed is surrendered,

and the Supplier shall comply with any such notice.

* 1. The Supplier shall:
     1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
     2. if requested, provide the Authority with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Authority’s premises in connection with the Agreement; and
     3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Authority.
  2. Any Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
  3. Any replacements to the Key Personnel shall be subject to the prior written agreement of the Authority (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

1. Assignment and Sub-Contracting
   1. The Supplier will comply with Annex 12 Part A ‘Supply Chain Rights and Protection’ and provide the Authority with a full list of Key Subcontractors at Annex 12 Part B ‘Key Subcontractors’.
2. Implementation Plan
   1. The Supplier shall comply with the Implementation Plan as set out in Annex 6 (Implementation Plan).
   2. The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date time to that Deliverable in the Implementation Plan so as to ensure that each Deliverable identified in the Implementation plan is achieved on or before its Deliverable Date.
   3. The Supplier shall monitor its performance against the Implementation Plan and Milestones and any other requirements of the Authority as set out in this contract and report to the Authority on such performance. Changes to the Implementation Plan shall only be made subject to Approval. The Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of an Authority cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone date).
   4. Where so specified by the Authority in the Implementation Plan or elsewhere in this contract, time in relation to compliance with a date, Milestone date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone or period shall be a material default of this contract unless the Parties expressly agree otherwise.
   5. Delay in Implementation
      1. If the Supplier becomes aware that there is, or there is reasonably likely to be, a delay under this contract:
      2. it shall:
         * 1. notify the Authority as soon as practically possible and no later than within two (2) Working Days from becoming aware of the delay or anticipated delay; and
           2. include in its notification an explanation of the actual or anticipated impact of the delay; and
           3. comply with the Authority’s instructions in order to address the impact of the delay or anticipated delay; and
           4. use all reasonable endeavours to eliminate or mitigate the consequences of any delay or anticipated delay.
3. Intellectual Property Rights
   1. The Supplier shall comply with the provisions set out in Annex 5.
4. Governance and Records
   1. The Supplier shall comply with the provisions set out in Annexes 9 and 10.
5. Confidentiality, Transparency and Publicity
   1. Subject to clause 11.2, each Party shall:
      1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
      2. not use or exploit the disclosing Party’s Confidential Information in any way except for the purposes anticipated under the Agreement.
   2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
      1. where disclosure is required by applicable law or by a court of competent jurisdiction;
      2. to its auditors or for the purposes of regulatory requirements;
      3. on a confidential basis, to its professional advisers;
      4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
      5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier’s obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier’s confidentiality obligations under the Agreement; and
      6. where the receiving Party is the Authority:
         * 1. on a confidential basis to the employees, agents, consultants and contractors of the Authority;
           2. on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Authority transfers or proposes to transfer all or any part of its business;
           3. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
           4. in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this clause 12.

* 1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Authority to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
  2. The Supplier shall take reasonable steps to ensure that it and all its staff shall not make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Authority.
  3. The Supplier shall take reasonable steps to ensure that any Subcontractors (and their staff) used to support the delivery of the contracted services shall not make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Authority.

1. Freedom of Information
   1. The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
      1. provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
      2. transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
      3. provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
      4. not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
   2. The Supplier acknowledges that the Authority may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances, the Authority shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure.
   3. Notwithstanding any other provision in the Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.
2. Data Protection
   1. For the purposes of this clause 13, for “Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach” and “Data Protection Officer” take the meaning given in the GDPR.
   2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Annex 3 by the Authority and may not be determined by the Supplier.
   3. The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
   4. The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
      1. a systematic description of the envisaged processing operations and the purpose of the processing;
      2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
      3. an assessment of the risks to the rights and freedoms of Data Subjects; and
      4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
   5. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
      1. process that Personal Data only in accordance with Annex 3, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
      2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
         * 1. nature of the data to be protected;
           2. harm that might result from a Data Loss Event;
           3. state of technological development; and
           4. cost of implementing any measures;
      3. ensure that:
         * 1. the Staff do not process Personal Data except in accordance with this Agreement (and in particular Annex 3);
           2. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:

are aware of and comply with the Supplier’s duties under this clause;

are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

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 Authority or as otherwise permitted by this Agreement; and

have undergone adequate training in the use, care, protection and handling of Personal Data; and

* + 1. not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
       - 1. the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
         2. the Data Subject has enforceable rights and effective legal remedies;
         3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
         4. the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
    2. at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.
  1. Subject to clause 13.7, the Supplier shall notify the Authority immediately if it:
     1. receives a Data Subject Access Request (or purported Data Subject Access Request);
     2. receives a request to rectify, block or erase any Personal Data;
     3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
     4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
     5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
     6. becomes aware of a Data Loss Event.
  2. The Supplier’s obligation to notify under clause 13.6 shall include the provision of further information to the Authority in phases, as details become available.
  3. Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 13.6 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
     1. the Authority with full details and copies of the complaint, communication or request;
     2. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
     3. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
     4. assistance as requested by the Authority following any Data Loss Event;
     5. assistance as requested by the Authority with respect to any request from the Information Commissioner’s Office, or any consultation by the Authority with the Information Commissioner's Office.
  4. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
     1. the Authority determines that the processing is not occasional;
     2. the Authority determines the processing includes special categories of data as referred to in Article 9 (1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
     3. the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
  5. The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority’s designated auditor.
  6. The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
  7. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
     1. notify the Authority in writing of the intended Sub-processor and processing;
     2. obtain the written consent of the Authority;
     3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and
     4. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
  8. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
  9. The Supplier may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
  10. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Authority may on not less than 30 Working Days’ notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

1. Liability
   1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Authority if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Agreement.
   2. Subject always to clauses 14.3 and 14.4:
      1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the greater of one million pounds (£1,000,000) or one hundred percent (100%) of the aggregate of all Revenue which became payable under this Agreement by the Supplier during the year immediately preceding the year in which the default occurs; and
      2. except in the case of claims arising under clause 2.3 of Annex 5 and 18.3, in no event shall the Supplier be liable to the Authority for any:
         * 1. loss of profits;
           2. loss of business;
           3. loss of revenue;
           4. loss of or damage to goodwill;
           5. loss of savings (whether anticipated or otherwise); and/or
           6. any indirect, special or consequential loss or damage.
   3. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
      1. death or personal injury caused by its negligence or that of its Staff;
      2. fraud or fraudulent misrepresentation by it or that of its Staff; or
      3. any other matter which, by law, may not be excluded or limited.
   4. The Supplier’s liability under the indemnity in clause 2.3 of Annex 5 and 18.3 shall be unlimited.
2. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two Months, either Party may terminate the Agreement by written notice to the other Party.

1. Termination
   1. The Authority may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 Month later than the date of service of the relevant notice.
   2. Without prejudice to any other right or remedy it might have, the Authority may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
      1. (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
      2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
      3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
      4. undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
      5. breaches any of the provisions of clauses 11, 12, 13 and 17;
      6. triggers an MI Default in accordance with paragraph 8 of Annex 10;
      7. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier’s assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or
      8. fails to comply with legal obligations in the fields of environmental, social or labour law.
   3. The Supplier shall notify the Authority as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
   4. The Supplier may terminate the Agreement by written notice to the Authority if the Authority has not paid any undisputed amounts within 90 days of them falling due.
   5. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or Annexes 5 or 7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
   6. Upon termination or expiry of the Agreement, the Supplier shall:
      1. give all reasonable assistance to the Authority and any incoming supplier of the Services;
      2. return all requested documents, information and data to the Authority as soon as reasonably practicable; and
      3. comply with the obligations set out at Annex 7.
2. Compliance
   1. The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Authority shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Authority’s premises and which may affect the Supplier in the performance of its obligations under the Agreement.
   2. The Supplier shall:
      1. comply with all the Authority’s health and safety measures while on the Authority’s premises; and
      2. notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Authority’s premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
   3. The Supplier shall:
      1. perform its obligations under the Agreement in accordance with all applicable equality Law and the Authority’s equality and diversity policy as provided to the Supplier from time to time; and
      2. take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
   4. The Supplier shall supply the Services in accordance with the Authority’s environmental policy as provided to the Supplier from time to time.
   5. The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
      1. the Official Secrets Acts 1911 to 1989; and
      2. section 182 of the Finance Act 1989.
3. Prevention of Fraud and Corruption
   1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
   2. The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
   3. If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Authority) the Authority may:
      1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Agreement; or
      2. recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this clause.
4. Dispute Resolution
   1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
   2. If the dispute cannot be resolved by the Parties within one Month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “Mediator”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
   3. If the Parties fail to appoint a Mediator within one Month, or fail to enter into a written agreement resolving the dispute within one Month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.
5. General
   1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
   2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
   3. The Agreement cannot be varied except in writing signed by a duly authorised representative of each Party.
   4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
   5. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
   6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.
   7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
   8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.
6. Notices
   1. Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
   2. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
   3. Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.
7. Governing Law and Jurisdiction
   1. The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

12/08/2013

**Annex 2**

**Annex 3**

**Specification**

12/08/2013

**Annex 3**

**Part 2 – Existing Publications and Existing Accreditation Materials**

The territory for all the below shall be worldwide.

1. The Business Case Accreditation, Examination and Training Services Portfolio
   1. The Business Case Accreditation, Examination and Training Services Core Reference Materials are:
      1. The Examinations and therefor accreditation are based on the International versions of the guides (these have UK specific references removed) but are otherwise the same. Any agreed “international infrastructure” business case guide developed with the IPA will also be part of the Accreditation Materials.
      2. The Core syllabuses supplied by the Authority and any Examinable syllabuses and examination questions derived from it and from the accreditation guidance form part of the Accreditation Materials.
      3. The “core training slides” and any associated “speakers notes” previously referred to as “vanilla training materials” are part of the Accreditation Materials.
2. Translations
   1. In relation to the products contained within the Business Case Accreditation, Examination and Training Services Portfolio, glossaries available in the following languages:
      1. English
   2. All other languages to be agreed with the Authority before producing. The Authority expects translations into other languages to be independently verified to ensure fitness for purpose. The responsibility for implementing the independent verification rests with the Supplier.

12/08/2013

**Annex 4**

**Supplier’s Tender**

12/08/2013

**Annex 5**

**Intellectual Property Rights**

1. Intellectual Property
   1. The Authority hereby grants to the Supplier sole licence during the Term to use, copy and reproduce such Intellectual Property Rights of the Crown subsisting within the Agreement Materials, with the exclusion of:
      1. the Trade Marks and the Domain Names, which shall be addressed by the terms of paragraph 1.2 below; and
      2. the Crown IPR, which is addressed by paragraphs 1.13 and 1.14 below,

as may be strictly necessary in order to properly perform the Services, provided that the Supplier shall have first obtained the prior written approval of the Authority with respect to any such copying, use and reproduction in worldwide, provided that such licence shall not include the grant of any licence in respect of rights in typographical arrangements of any Existing Publication or rights in computer programs used for the delivery of any Existing Publication which is delivered to the public electronically or on or via a digital medium and provided also that the Authority reserves the right at any time to appoint any third party (or third parties), or itself, to develop, translate, print, publish, market and/or distribute any Non-Accepted Material using any or all of the rights detailed above.

* 1. The Authority grants to the Supplier sole licence during the Term:
     1. subject to paragraphs 1.2.2 and 1.2.3 below, to use the Trade Marks worldwide with the prior written consent of the Authority as may be strictly necessary in order to properly perform the Services; and
     2. to use the relevant Product Brands worldwide, with respect to the printing, publishing, marketing and distribution by the Supplier of any particular Accreditation Material, in accordance with the terms of paragraph 8.3 below; and
     3. to use the relevant Product Brands worldwide, with respect to the printing, publishing, marketing and distribution by the Supplier of any particular Derivative Material or Publication Translation, in accordance with the terms of paragraph 1.2.4 below; and
     4. to use the Authority Domain Names worldwide, with respect to the development and upload of content, maintenance and hosting of the websites as described in Schedule 2 (Services) and Schedule 16 (Domain Names); and

in each case in accordance with the terms of this Agreement provided that the Authority reserves the right at any time to appoint any third party (or third parties), or itself, to develop, translate, print, publish, market and/or distribute any Non-Accepted Material by reference to and using any or all of the Trade Marks, Domain Names and rights detailed above.

* 1. Nothing in paragraphs 1.1 and 1.2 above shall prejudice the right of the Authority at any time during the Term or thereafter to develop, translate, print, publish, market and distribute any Non-Accepted Material in any format and throughout any territory, whether by itself or through the use of third parties, and whether or not by reference to or using any of the Trade Marks or Domain Names.
  2. With the exception of the right to sub-licence expressly detailed in paragraph 1.12, the Supplier shall otherwise be entitled to sub-license the rights granted to it under paragraphs 1.1 and 1.2 worldwide solely to:
     1. any third party which falls within the categories listed in paragraph 3, conditional upon the Supplier complying with the requirements of paragraph 8 and paragraph 3 (as appropriate) below, and provided also that such sub-licence shall exclude any rights in and to the Authority Brands; and/or
     2. any individual purchaser of any particular Agreement Material (other than any Existing Publication), to use the same for the benefit only of that individual, and any corporate purchaser of any such Agreement Material (other than any Existing Publication), to allow the corporation’s employees and authorised agents to use the same for the benefit only of that corporation,

provided that, in each case, such sub-licences shall be limited solely to the extent necessary in order to achieve their relevant permitted purpose, and that the Supplier shall otherwise be prohibited from sub-licensing, assigning or otherwise transferring the rights granted to it by paragraphs 1.1 and 1.2 without the prior written consent of the Authority.

* 1. Notwithstanding any other provision of this Agreement, all Intellectual Property Rights subsisting from time to time in:
     1. the Core Reference Materials (i.e. the 5 case model);
     2. the Core Content (e.g. Business Case Accreditation, Examination and Training Services guidance material);
     3. the Trade Marks;
     4. the Accreditation Materials;
     5. the Authority Data;
     6. the Services Data;
     7. the Quality Survey; and
     8. any and all works, material or content of which the author is an employee or servant of the Crown (including any such work, material or content included in any Agreement Materials);

(together the “Authority Materials”) shall belong and remain the property of the Authority.

* 1. Notwithstanding any other provision of this Agreement, all Intellectual Property Rights subsisting from time to time in the Trade Marks shall belong and remain the property of the Authority
  2. The Supplier agrees that all Intellectual Property Rights subsisting from time to time in and to the Authority Materials (with the exclusion of any Trade Marks belonging to the Authority) shall belong to the Crown as appropriate) absolutely and the Supplier hereby assigns to the Crown (as appropriate) with full title guarantee all right, title and interest anywhere in the world in and to:
     1. the Authority Materials;
     2. all Intellectual Property Rights in and to the Authority Materials; and
     3. any and all claims, remedies and rights in respect of any infringement of any property assigned to the Relevant Owner (as appropriate) under this paragraph 1.7 including the right to institute proceedings in any court of competent jurisdiction and to recover damages, costs and any other form of compensation and to obtain injunctive relief in respect of any such infringement;

with the intent that all such right, title and interest in any Authority Materials shall forthwith vest in the Relevant Owner (as appropriate) absolutely upon the same coming into existence.

* 1. Notwithstanding any other provision of the Agreement, all Intellectual Property Rights in the Derivative Materials and any Publication Translations (save with respect to any part or parts of the Derivative Materials or Publication Translations which constitute the Authority Materials) (“Supplier IPR”) shall belong, as between each Relevant Owner and the Supplier, to the Supplier.
  2. The Supplier grants to the Authority (and, where relevant, shall procure the grant to the Authority of) the non-exclusive, perpetual, irrevocable and royalty free right to use and authorise others to use all Supplier IPR for all purposes and in all media throughout the world for the internal use of the Authority.
  3. The Supplier shall ensure that all agreements with any author of or other contributor to any work which is included in any Agreement Materials shall, where relevant, include:
     1. an assignment in full to the Authority (or, at the Authority’s request, directly to the Supplier) with full title guarantee of all Intellectual Property Rights and related proprietary rights subsisting in or to the Authority Materials which are to be created from time to time by such author or contributor, for the purposes of enabling the Supplier to fulfil the requirements of paragraph 1.6 and 1.7 above; and
     2. obtain a waiver from them of any so-called moral rights and rights under section 77 and section 80 of the Copyright Designs and Patents Act 1988 (and their equivalent in any other country of the world), without prejudice however to any contractual right (subject to the prior written approval of the Authority) they may have to any credit;
     3. an assignment of any rental and lending rights in such work or contribution as are or may be conferred on each such person under the laws of any jurisdiction whether pursuant to the implementation of the EC Directive 92/100 of 19th November 1992 or otherwise;
     4. an acknowledgement by such person that the remuneration agreed to be paid to such person under their agreement relating to the Publication includes without limitation fair and equitable remuneration (whether or not separately identified in such agreement) for all such rental rights granted under the agreement; and
     5. an undertaking that such person will not make a claim whether against the Supplier or the Authority or their respective licensees or assignees for any further remuneration in respect of the exploitation of any such rights;

and the Supplier shall forthwith notify the Authority of any failure to obtain such assignment, acknowledgement, waiver and/or undertaking.

* 1. The Supplier shall not delete or remove any copyright notices contained in, affixed to or used in connection with the Authority Materials.
  2. The Supplier agrees that any permitted use which either it, any permitted sub-licensee and/or Subcontractor (collectively “Licensee”) may make of the Trade Marks and/or Legends under paragraphs 1.1 and 1.2, including with respect to any Publication, Marketing Material, website and/or any other material (“Material”), shall be (and the Supplier shall procure that any such use by any permitted sub-licensee and/or Subcontractor shall be) solely on condition that:
     1. any such Material is compliant with the Quality Standards;
     2. the Licensee shall only make use of the Trade Marks and Legends for the purposes authorised in this Agreement and, in particular, shall not use the Trade Marks or Legends in any way which would tend to allow them to become generic, lose their distinctiveness, become liable to mislead the public, or be materially detrimental to or inconsistent with the good name, goodwill, reputation and image of the Authority;
     3. the Licensee will not do anything to prejudice or to endanger the value or validity of any of the Trade Marks or the Legends and will not use any of them other than in accordance with the terms of this paragraph 1;
     4. the Licensee shall only use the Trade Marks and the Legends in the form stipulated from time to time by the Authority and shall observe any reasonable directions given by the Authority as to their colours and size of representations and their manner and disposition in relation to any such Material making use of the Trade Marks and/or the Legends;
     5. no trade mark other than the Trade Marks and the Legends shall be used by the Licensee in relation to any such Material, and on the basis that the trade mark which is not one of the Trade Marks or the Legends is presented separately from them so that each appears to be a trade mark in its own right distinct from the other trade mark;
     6. the Licensee recognises the Authority’s title to the Trade Marks and that all goodwill generated by its use of the Trade Marks and the Legends will ensure to the benefit of the Authority;
     7. the Licensee will at the request of the Authority make joint applications with the Authority to the relevant authority worldwide for the registration of the Supplier as a licensee and for that purpose the Supplier shall execute such documents as may reasonably be required;
     8. the Licensee shall not use any of the Trade Marks or Legends as part of its corporate or business name, trading style or part of the name of any entity connected with it without the prior written consent of the Authority. If the Authority gives such consent, it will be revocable on three (3) months’ written notice; and
     9. first use of a Trade Mark by the Licensee shall be accompanied by wording and clear marking to show that the Trade Mark is used by the Licensee with permission of the Authority. If a Trade Mark is registered (as indicated in Part 2 to Annex 5) or as notified by the Authority to the Licensee from time to time) the Licensee shall ensure that the ® symbol accompanies that mark and in all other cases the Licensee shall ensure that the ™ symbol accompanies the Trade Mark

and the parties hereby agree that the Authority shall be entitled at any time to terminate, with respect to any given Licensee, such permitted use upon any failure to comply with the above conditions.

* 1. The Supplier undertakes to do all acts and execute all documents, and where necessary to procure the same from any third parties, as may be required by the Authority in its absolute discretion in order to protect, perfect or enforce any of the rights granted by or to the Authority pursuant to this Agreement.
  2. The Supplier acknowledges that, with respect to any Crown IPR identified in paragraph 4 which is under the control of the Controller:
     1. any rights relating to the same which are granted by the Authority to the Supplier under this Agreement derive from a formal delegation of authority granted to the Authority by the Controller;
     2. any permitted use of the same made by the Supplier (or any of its sub-licensees) shall be accompanied by an express acknowledgement in the following format:

"© Copyright 20XX Published on behalf of His Majesty’s Treasury"

and shall also be accompanied by details (in a form approved from time to time by the Authority) regarding the method of applying for re-use licences with respect to the same;

* + 1. The Authority reserves the right on behalf of the Controller to licence the re-use of the same from time to time and without restriction under The Re-Use of Public Sector Information Regulations 2005 (or any other applicable legislation from time to time in force);
    2. any legal proceedings which may be commenced in relation to the same will be subject to the prior written approval of the Controller and the Controller shall, upon request of the Controller, be entitled to be included as a party to such proceedings; and
    3. the Supplier shall not, save as otherwise expressly permitted pursuant to the terms of paragraph 3, have any entitlement to grant reproduction rights with respect to the same of whatever nature.
  1. The Authority grants to the Supplier sole right worldwide to sub-license the use of Crown Copyright material within the context of the Agreement Materials, solely in accordance with and subject to the terms of paragraph 3.

1. Infringement of Third Party Intellectual Property Rights or Applicable Law
   1. The Supplier shall procure that the provision of the Services shall not infringe any Intellectual Property Rights of any third party, provided the Authority’s use of any licensed IPR does not violate any license agreement with any third party or infringe on the rights of any person and to the knowledge of the Authority, no person is infringing the licensed IPR.
   2. The Supplier shall procure that the Services and any Agreement Materials are provided in accordance with all applicable laws, enactments, regulations and other similar requirements from time to time in force worldwide (including, without limitation, all applicable local laws relating to advertising, broadcasting, consumer protection, health and safety and telecommunications) and shall obtain at its own expense all licences, permits, consents or other authorisations necessary for the provision of the Services (including, without limitation, for the publication and sale of the any New Publications worldwide) lawfully and in accordance with this Agreement).
   3. The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on an indemnity basis), losses and damages howsoever arising from or incurred in connection with any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any Intellectual Property Right arising from:
      1. the provision or receipt of the Services; and/or
      2. the use and/or possession of any Agreement Materials by the Authority or any third party; and/or
      3. the printing, publishing, marketing and/or distribution of any Agreement Materials by the Supplier or by any of its Subcontractors or sub-licensees; and/or
      4. any failure to comply with its obligations in paragraph 2.2;

except to the extent that such liabilities have resulted directly from the Authority’s breach of paragraph 2.1.

* 1. The Supplier shall promptly notify the Authority if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property Right or failure to comply with any of its obligations in paragraph 2.2.
  2. The Authority shall promptly notify the Supplier if any claim or demand is made or action brought against the Authority to which paragraphs 2.1, 2.2, or 2.3 may apply. The Supplier shall at its own expense conduct any litigation arising there from and all negotiations in connection therewith.
  3. The Authority shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority to which paragraph 2.3 may apply or any claim or demand made or action brought against the Supplier to which paragraph 2.4 may apply. The Supplier shall reimburse the Authority for all costs and expenses (including but not limited to legal costs and disbursements on a solicitor and Authority basis) incurred in so doing.
  4. If a claim or demand is made or action brought to which paragraph 2.3 may apply or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier may at its own expense and within a reasonable time either:
     1. modify any or all of the Agreement Materials, so as to avoid the infringement or breach or the alleged infringement or breach, provided that the terms herein shall apply mutatis mutandis to such modified Agreement Materials and provided also that such modified Agreement Materials shall represent materials of sufficient equivalence (including, without limitation, in terms of content, cost and quality) and shall otherwise be acceptable to the Authority (such acceptance not to be unreasonably withheld); or
     2. procure a licence or authorisation which enables it to provide the Services (including, without limitation, to print, publish, distribute and sell the Agreement Materials) on terms which are acceptable to the Authority.
  5. If the Supplier has availed itself of its rights to modify the Agreement Materials pursuant to paragraph 2.7.1 or to procure a licence or authorisation under paragraph 2.7.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or breach or alleged infringement or breach, then the Supplier shall have no further liability under this paragraph 2 in respect of the said claim, demand or action other than to reimburse the Authority for its out of pocket costs and expenses arising as a consequence of the same.
  6. If a modification in accordance with paragraph 2.7.1 above is not possible so as to avoid the infringement or breach or alleged infringement or breach or the Supplier has been unable to procure a licence or authorisation in accordance with paragraph 2.7.2 then, without prejudice to any other rights or remedies it may have, the Authority shall be entitled to terminate this Agreement pursuant to clause 16.2.5 of Annex 1.

1. Trade Mark and Crown Copyright Sub-Licensing
   1. Save as otherwise expressly directed by the JMB, the Supplier shall only be entitled to grant sub-licences to third parties with respect to any Trade Mark in accordance with the terms of this paragraph 3.
   2. Save as otherwise expressly directed by the JMB, the Supplier shall only be entitled to grant sub-licences to third parties with respect to any Crown IPR (in any given case, the “Sub-Licensed Crown IPR”) in accordance with the terms of this paragraph 3 and subject to the following express conditions:
      1. that any such Sub-Licensed Crown IPR may only be used with respect to such Publication(s) and/or Service(s) as may from time to time have been expressly accredited and/or approved for such use, by or on behalf of the Authority, pursuant to the terms of this Agreement; and
      2. that such rights (or any part thereof) in the same may at any time be withdrawn or modified by the Authority in writing, to the extent that the Authority is required to do so;
         * 1. following any change in law, regulation or guidance; or
           2. as a consequence of any withdrawal or modification by the Controller (or such other relevant head licensee or delegator) of such rights from time to time.
   3. Any sub-licence granted by the Supplier pursuant to this paragraph 3 shall be granted:
      1. upon such terms detailed in the Proforma Sub-Licence of Part 2 below; and
      2. with respect to such rights and materials as are further detailed in the Proforma Sub-Licence of paragraph 3.4 below and in the table contained within Part 4 below; and
      3. to such parties, and within the permitted scopes of use, as are further detailed in Part 4 below,

unless otherwise expressly directed by the JMB.

* 1. The Parties agree that the sub-licensing permitted under this Annex 5 shall be expressly limited to those categories of third parties, and those permitted scopes of usage, which are further detailed in the text and the table below. If at any time the Supplier wishes to grant sub-licences outside of these parameters then the express permission of the JMB must first be obtained.

1. Permitted Scope of Sub-Licencing
   1. The Supplier will have the right to sub-licence those ATOs, ACOs and third-party producers of Derivative Materials as may have been accredited under this Agreement, to use relevant Trade Marks and, where relevant, Crown IPR for the delivery of such products and services as have been accredited or agreed by or on behalf of the Authority in accordance with this Agreement. All such sub-licensing shall be conditional upon full compliance with:
      1. the principles set out in the table below
      2. the written instructions and guidelines of the JMB; and
      3. Good Industry Practice;

and shall expressly exclude any products and services which have not have been accredited or agreed by or on behalf of the Authority for such use in accordance with the terms of this Agreement.

| **Service** | **Licensing position** | **Purpose/process** |
| --- | --- | --- |
| i) Accrediting ATOs | ATOs will require a sub-licence as training materials will reuse diagrams and major elements of text from the core manuals.  This requires Crown Copyright use and Product Brand licensing.  ATOs’ marketing materials – these require Product Brand licensing – but not copyright use. | Rights for the Supplier to sub-license (on a non-exclusive basis) Product Brands and Crown Copyright to ATOs solely for these purposes (in accordance with guidelines issued from time to time by the Authority).  No rights to create further derivative products utilising the Crown Copyright material or to further sub-license the Crown Copyright material. |
| ii) Accrediting consultants/consultancy organisations accredited by the Supplier. | Consultants/ consultancy organisations will require a sub-licence to use Crown Copyright material and Product Brands in the course of their consultancy practices.    Accredited consultants/consultancy organisations marketing materials – these require Product Brand licensing – but not copyright use. | Rights for the Supplier to sub-license (on a non-exclusive basis) Product Brands and Crown Copyright to Accrediting consultants/ consultancy organisations solely for these purposes (in accordance with guidelines issued from time to time by the Authority).  No rights to create further derivative products utilising the Crown Copyright material or to further sub-license the Crown Copyright material. |
| iii) Accrediting such Derivative Materials as may from time to time have been accredited and agreed by or on behalf of the Authority for this use in accordance with the terms of this Agreement | Will require a sub-licence permitting the re-use of Crown Copyright and Product Brands in the Derivative Materials. | Rights for the Supplier to sub-license (on a non-exclusive basis) Product Brands and Crown Copyright to publishers solely for these purposes (in accordance with guidelines issued from time to time by the Authority).  This will be subject to the Authority prior approval pursuant to Annex 9 and will be granted on a case-by-case basis. |
| iv) Accrediting such Translations as may from time to time have been accredited and agreed by or on behalf of the Authority for this use in accordance with the terms of this Agreement | Will require a sub-licence permitting the re-use of Crown Copyright material and Product Brand use in the translated materials. | Rights for the Supplier to sub-license (on a non-exclusive basis) Product Brands and Crown Copyright to publishers solely for these purposes (in accordance with guidelines issued from time to time by the Authority).    This will be subject to the Authority prior approval pursuant to Annex 9and will be granted on a case-by-case basis. |
| v) Accrediting such website content providers as may from time to time have been accredited and agreed by or on behalf of the Authority for this use in accordance with the terms of this Agreement | Will require the use of Crown Copyright material and Product Brands on the website pages. | Rights for the Supplier to sub-license (on a non-exclusive basis) Product Brands and Crown Copyright to website content providers solely for these purposes (in accordance with guidelines issued from time to time by the Authority).  No rights to create further derivative products utilising the Crown Copyright material or to further sub-license the Crown Copyright material. |

12/08/2013

**Annex 5**

**Part 2 – Trade Marks**

[To be updated once Trade Marks are used and/or registered]

1. Authority Brands
   1. Registrations/Applications

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Mark** | **Territory** | **Registration number** | **Classes** | **Renewal** | **In progress** |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

* 1. Acknowledgement Statements

|  |  |  |
| --- | --- | --- |
| **Trade Mark Acknowledgement Statements – General the Authority** | **Territory** | **In progress** |
|  |  |  |
|  |  |  |

1. Product Brands
   1. Registrations/Applications

| **Mark** | **Territory** | **Registration number** | **Classes** | **Renewal** | **In progress** |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |

* 1. Unregistered Rights
  2. Business Case Accreditation, Examination and Training Services Acknowledgement Statements

|  |
| --- |
| **Trade Mark Acknowledgement Statements - Business Case Accreditation, Examination and Training Services** |
|  |
|  |

12/08/2013

**Annex 5**

**Part 3 – Domain Names**

[To be updated once Domain Names are used and/or registered]

12/08/2013

**Annex 6**

**Implementation Plan**

1. Introduction
   1. This Annex 6 specifies the Implementation Plan in accordance with which the Supplier shall provide the Services.
2. Implementation Plan

The Implementation Plan for BBC is described below:

* + 1. The Deliverables for the Implementation Plan for BBC are described below:
  1. A detailed description of the steps needed to build, create or transfer and take over (as agreed with the incumbent and the Authority) the following;
     1. syllabuses, examination materials and questions and associated computerised administration systems for booking examinations, marking examinations, awarding accreditation and certificates, recording results and maintaining registers of accreditations awarded
     2. systems and arrangements for the inspection of Trainers to ensure they reach the required standard for the purposes of their accreditation
     3. Systems for the random inspection of examinations in order to ensure the quality of exam administration is maintained.
     4. existing “vanilla training materials” including speakers notes and power-point slides
     5. the existing register of accredited training organisations and systems and arrangements for its maintenance
     6. the existing register of accredited trainers, systems and arrangements for its maintenance
     7. transfer of the Authorities existing Programme Fund as specified at the time by the authority and arrangements for its continued administration and reporting under supervision of the Authorities standards board.
     8. Arrangements for promotion of the accredited training programme across the UK and globally
  2. The timetable, process and actions for creating the assessment and examination materials;
  3. Key named personnel in the Supplier’s organisation who are tasked with implementation, including the Project manager with overall co-ordination and delivery responsibility and task/activity project sub managers;
  4. A detailed description for meeting the Key Milestones;
  5. A RACI matrix showing roles and responsibilities across the Authority, the Supplier’s organisation and Authorities;
  6. How payment will be managed from the Supplier to the Authority
  7. How the Supplier handles the transfer of existing syllabus from the incumbent supplier, stating the process to be followed, support given to the Authority and communications needed with the incumbent Supplier and Authorities;
  8. Staffing and training of roles to support the Services provided under this contract, including security checks. For example, Authority account managers, service desk and analysts;
  9. Any other resource requirements, including where tasks lie outside of the Supplier’s organisation.

1. Key Milestones

|  |  |  |
| --- | --- | --- |
| Milestone | Description | Timing |
| 1 | Kick off meeting between Authority and Supplier and production of outline high level plan for delivery of the contract | Within one week of contact award or as specified by the customer if longer |
| 2 | Production of detailed implementation plan for knowledge transfer and handover developed with the existing supplier, and / or if agreed by the customer a detailed plan to support the growth of the programme in the UK. The plan contents to be as specified at Annex 6 of the Terms and Conditions. | Within one month of the of the contract award or as specified by the customer if longer |
| 3 | Production of systems for administration and management of systems for recruitment, accreditation, registration and support of ATOs and Trainers and the transfer or take on of the current ATOs and trainers on the pre-existing terms and conditions. | Within 3 months of the award of the contract or as specified by the customer if longer |
| 4 | Completion of arrangements to take over the production and administration of examinations and accreditation systems. Supported by successful test runs at scale of the web based examination booking systems and the production of examination papers. | Within 3 months of the award of the contract or as specified by the customer if longer |
| 5 | Demonstrate that all systems are operational and ready for live transfer | Within 3 months of the award of the contract or as specified by the customer if longer |
| 6 | Implement all systems and take on full running | Within 3 months of the award of the contract or as specified by the customer if longer |
| 7 | Agree questionnaire design, format, sampling approach, and frequency of the Quality Survey | Within 3 months of the award of the contract |

[Implementation Plan to be inserted here once approved]

12/08/2013

**Annex 7**

**Exit Management**

1. Introduction
   1. This Annex 7 describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Authority leading up to and covering the Expiry Date of this Agreement as set out in the Award Letter and the transfer of service provision to the Authority and/or a Replacement Supplier.
   2. The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Supplier to the Authority and/or a Replacement Supplier at the Expiry Date of this Agreement as set out in the Award Letter.
2. Obligations During the Term to Facilitate Exit
   1. During the Term, the Supplier shall:
      1. create and maintain a Register of all:
         * 1. Supplier Assets, detailing their:

make, model and asset number;

ownership and status as either Exclusive Assets or Non-Exclusive Assets;

Net Book Value;

condition and physical location; and

use (including technical specifications); and

* + - * 1. Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
    1. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
    2. agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
    3. at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.
  1. The Supplier shall:
     1. procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement; and
     2. (unless otherwise agreed by the Authority in writing) procure that all licences for Third Party IPR supplied by third parties and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Authority to the Authority (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Authority.
  2. Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 2.2.2 of this Annex 7 which the Supplier proposes to enter into after the Commencement date of this Agreement as set out in the Award Letter is assignable and/or capable of novation to the Authority (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Authority of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Authority so directs, may include the Supplier seeking an alternative subcontractor or provider of Services to which the relevant agreement relates.
  3. Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Annex 7 and provide written notification of such appointment to the other Party within three (3) Months of the Commencement date of this Agreement as set out in the Award Letter. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Subcontractors comply with this Annex 7. The Supplier shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Annex 7. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Annex 7 and each Party's compliance with it.

1. Obligations to Assist on Re-Tendering of Services
   1. On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
      1. details of the Service(s);
      2. a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
      3. an inventory of the Supplier IPR;
      4. details of the cost to the Supplier of generating each item of the Supplier IPR;
      5. an inventory of Authority Data in the Supplier's possession or control;
      6. details of any key terms of any third-party contracts and licences, particularly as regards charges, termination, assignment and novation;
      7. a list of on-going and/or threatened disputes in relation to the provision of the Services;
      8. all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees’ required to be provided by the Supplier under this Agreement such information to include the Staffing Information; and
      9. such other material and information as the Authority shall reasonably require,

(together, the “**Exit Information**”).

* 1. The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 3.2 of this Annex 7 disclose any Supplier’s Confidential Information which is information relating to the Supplier’s or its Subcontractors’ prices or costs).
  2. The Supplier shall:
     1. notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Authority regarding such proposed material changes; and
     2. provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.
  3. The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) Month period.
  4. The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
     1. prepare an informed offer for those Services; and
     2. not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

1. Exit Plan
   1. The Supplier shall, within three (3) Months after the Commencement date of this Agreement as set out in the Award Letter, deliver to the Authority an Exit Plan which:
      1. sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Agreement;
      2. complies with the requirements set out in paragraph 4.3 of this Annex 7;
      3. is otherwise reasonably satisfactory to the Authority.
   2. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such dispute shall be resolved in accordance with the Dispute Resolution Procedure.
   3. Unless otherwise specified by the Authority or Approved, the Exit Plan shall set out, as a minimum:
      1. how the Exit Information is obtained;
      2. the management structure to be employed during both transfer and cessation of the Services;
      3. the management structure to be employed during the Termination Assistance Period;
      4. a detailed description of both the transfer and cessation processes, including a timetable;
      5. how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Subcontractors (where applicable);
      6. details of contracts (if any) which will be available for transfer to the Authority and/or the Replacement Supplier upon the Expiry Date of this Agreement as set out in the Award Letter together with any reasonable costs required to affect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
      7. proposals for the training of key members of the Replacement Supplier’s personnel in connection with the continuation of the provision of the Services following the Expiry Date of this Agreement as set out in the Award Letter charged at rates agreed between the Parties at that time;
      8. proposals for providing the Authority or a Replacement Supplier copies of all documentation:
         * 1. used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
           2. relating to the use and operation of the Services;
      9. proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
      10. proposals for the identification and return of all Authority Property in the possession of and/or control of the Supplier or any third party (including any Subcontractor);
      11. proposals for the disposal of any redundant Services and materials;
      12. procedures to:
          * 1. deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information;
            2. determine which Staff are or are likely to become Transferring Supplier Employees; and
            3. identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees;
      13. how each of the issues set out in this Annex 7 will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
      14. proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Supplier in order to affect an orderly handover of the provision of the Services.
2. Termination Assistance
   1. The Authority shall be entitled to require the provision of Termination Assistance at any time during the Term by giving written notice to the Supplier (a "Termination Assistance Notice") at least four (4) Months prior to the Expiry Date of this Agreement as set out in the Award Letter or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
      1. the date from which Termination Assistance is required;
      2. the nature of the Termination Assistance required; and
      3. the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Services.
   2. The Authority shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) Months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.
3. Termination Assistance Period
   1. Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
      1. continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 5.1 of this Annex, provide the Termination Assistance;
      2. in addition to providing the Services and the Termination Assistance, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
      3. use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 6.1.2 of this Annex without additional costs to the Authority;
      4. provide the Services and the Termination Assistance, save to the extent that the Parties agree otherwise; and
      5. at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
   2. Without prejudice to the Supplier’s obligations under paragraph 6.1.3 of this Annex 7, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 6.1.2 of this Annex 7 without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to Annex 8.
4. Termination Obligations
   1. The Supplier shall comply with all of its obligations contained in the Exit Plan.
   2. Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Annex 7), the Supplier shall:
      1. cease to use the Authority Data;
      2. provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
      3. erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
      4. return to the Authority such of the following as is in the Supplier's possession or control:
         * 1. all copies of any software licensed by the Authority to the Supplier under this Agreement;
           2. all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
           3. any parts of the equipment which belongs to the Authority;
           4. any items that have been on-charged to the Authority, such as consumables; and
           5. all Authority Property issued to the Supplier. Such Authority Property shall be handed back to the Authority in good working order (allowance shall be made only for reasonable wear and tear);
           6. any sums prepaid by the Authority in respect of Services not delivered by the Expiry Date of this Agreement as set out in the Award Letter;
      5. make the Supplier IPR available for sale to the Authority and/or the Replacement Supplier at cost, in the event that the Authority and/or the Replacement Supplier wish to purchase the Supplier IPR;
      6. vacate any Authority premises;
      7. remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Staff;
      8. provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
         * 1. such information relating to the Services as remains in the possession or control of the Supplier; and
           2. such members of the Staff as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.
   3. Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Annex 7), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or termination services or for statutory compliance purposes.
   4. Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.
5. Assets and Sub-Contracts
   1. Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:
      1. terminate, enter into or vary any Sub-Contract;
      2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
      3. terminate, enter into or vary any licence for software in connection with the provision of Services.
   2. Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 6.1.5 of this Annex 7, the Authority shall provide written notice to the Supplier setting out:
      1. which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier (“**Transferring Assets**”);
      2. which, if any, of:
         * 1. the Exclusive Assets that are not Transferable Assets; and
           2. the Non-Exclusive Assets,

the Authority and/or the Replacement Supplier requires the continued use of; and

* + 1. which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the “**Transferring Contracts**”),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or the Replacement Services.

* 1. With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Charges at the Expiry Date of this Agreement, as set out in the Award Letter, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
  2. Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
  3. Where the Supplier is notified in accordance with paragraph 8.2.2 of this Annex that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
     1. procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
     2. procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
  4. The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to affect this novation or assignment.
  5. The Authority shall:
     1. accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
     2. once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
  6. The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
  7. The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to paragraph 8.6 of this Annex 7 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

1. Supplier Personnel
   1. The Supplier shall not and shall procure that any relevant Subcontractor shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) without the prior written consent of the Authority to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier and/or Replacement Subcontractor.
   2. During the Termination Assistance Period, the Supplier shall and shall procure that any relevant Subcontractor shall:
      1. give the Authority and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to the Supplier's personnel and/or their consultation representatives to present the case for transferring their employment to the Authority and/or the Replacement Supplier and/or to discuss or consult on any measures envisaged by the Authority, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
      2. co-operate with the Authority and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services.
   3. The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
   4. The Supplier shall not for a period of twelve (12) Months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier except that this paragraph 9.4 shall not apply where an offer is made pursuant to an express right to make such offer under paragraph 12 in respect of a Transferring Supplier Employee not identified in the Supplier's Final Staff List.
2. Charges
   1. Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Annex 7 including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.
3. Apportionments
   1. All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
      1. the amounts shall be annualised and divided by 365 to reach a daily rate;
      2. the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
      3. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
   2. Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under paragraph 11.1 of this Annex 7 as soon as reasonably practicable.
4. Staff Transfer
   1. The Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Staff.
   2. The Supplier agrees that within twenty (20) Working Days of the earliest of:
      1. receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
      2. receipt of the giving of notice of early termination or any partial termination of this Agreement;
      3. the date which is twelve (12) Months before the end of the Term; and
      4. receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) Month period),

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

* 1. At least thirty (30) Working Days prior to the Service Transfer date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Subcontractor:
     1. the Supplier's Final Staff List, which shall identify which of the Supplier Staff are Transferring Supplier Employees; and
     2. the Staffing Information in relation to the Supplier’s Final Staff List (insofar as such information has not previously been provided).
  2. The Authority shall be permitted to use and disclose information provided by the Supplier under paragraphs 12.11.1 and 12.11.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.
  3. The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to paragraphs 12.1 and 12.2 shall be true and accurate in all material respects at the time of providing the information.
  4. From the date of the earliest event referred to in paragraph 12.1, the Supplier agrees, that it shall not, and agrees to procure that each Subcontractor shall not, assign any person to the provision of the Services who is not listed on the Supplier’s Provisional Staff List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
     1. replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
     2. make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
     3. increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
     4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Staff List;
     5. increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
     6. terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List save by due disciplinary process,

and shall promptly notify, and procure that each Subcontractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or relevant Subcontractor or received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.

* 1. During the Term, the Supplier shall provide, and shall procure that each Subcontractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
     1. the numbers of employees engaged in providing the Services;
     2. the percentage of time spent by each employee engaged in providing the Services;
     3. the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme; and
     4. a description of the nature of the work undertaken by each employee by location.
  2. The Supplier shall provide, and shall procure that each Subcontractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer date including providing sufficient information in advance of the Service Transfer date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer date, the Supplier shall provide, and shall procure that each Subcontractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Staff List who is a Transferring Supplier Employee:
     1. the most recent month's copy payslip data;
     2. details of cumulative pay for tax and pension purposes;
     3. details of cumulative tax paid;
     4. tax code;
     5. details of any voluntary deductions from pay; and
     6. bank/building society account details for payroll purposes.
  3. The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Subcontractor. Such change in the identity of the Supplier of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10 (2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee.
  4. The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.
  5. Subject to paragraph 12.11.1, where a Relevant Transfer occurs, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
     1. any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer date;
     2. the breach or non-observance by the Supplier or any Subcontractor occurring on or before the Service Transfer date of:
        + 1. any collective agreement applicable to the Transferring Supplier Employees; and/or
          2. any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
     3. any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer date;
     4. any proceeding, claim or demand by His Majesty’s Revenue and Customs or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
        + 1. in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by His Majesty’s Revenue and Customs or other statutory authority relates to financial obligations arising on and before the Service Transfer date; and
          2. in relation to any employee who is not identified in the Supplier’s Final Staff List and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by His Majesty’s Revenue and Customs or other statutory authority relates to financial obligations arising on or before the Service Transfer date;
     5. a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer date);
     6. any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee identified in the Supplier’s Final Staff List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Subcontractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
     7. any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
  6. The indemnities in paragraph 12.11 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer date, including any Employee Liabilities:
     1. arising out of the resignation of any Transferring Supplier Employee before the Service Transfer date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
     2. arising from the Replacement Supplier’s failure, and/or Replacement Subcontractor’s failure, to comply with its obligations under the Employment Regulations.
  7. If any person who is not identified in the Supplier’s Final Still List claims, or it is determined in relation to any person who is not identified in the Supplier’s Final Supplier Personnel List that his/her contract of employment has been transferred from the Supplier or any Subcontractor to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
     1. the Authority shall procure that the Replacement Supplier shall, or any Replacement Subcontractor shall, within (five) 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
     2. the Supplier may offer (or may procure that a Subcontractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Subcontractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
  8. If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Subcontractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
  9. If after the fifteen (15) Working Day period specified in paragraph 12.13.2 has elapsed:
     1. no such offer of employment has been made;
     2. such offer has been made but not accepted; or
     3. the situation has not otherwise been resolved

the Replacement Supplier and/or Replacement Subcontractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the Replacement Supplier and/or Replacement Subcontractor acting in accordance with the provisions of paragraphs 12.13 to 12.14, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 12.9 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in paragraph 12.11:
     1. shall not apply to:
        + 1. any claim for:

discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor; or

* + - * 1. any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in paragraph 12.13.1 is made by the Replacement Supplier and/or Replacement Subcontractor to the Supplier within six (6) Months of the Service Transfer date.
  1. If any such person as is neither re-employed by the Supplier or any Subcontractor nor dismissed by the Replacement Supplier and/or Replacement Subcontractor within the time scales set out in paragraphs 12.13, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Subcontractor shall comply with such obligations as may be imposed upon it under applicable Law.
  2. The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier’s Final Staff List before and on the Service Transfer date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer date) and any necessary apportionments in respect of any periodic payments shall be made between:
     1. the Supplier and/or any Subcontractor; and
     2. the Replacement Supplier and/or the Replacement Subcontractor.
  3. The Supplier shall, and shall procure that each Subcontractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Subcontractor shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
  4. Subject to paragraph 12.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:
     1. any act or omission of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee identified in the Supplier’s Final Staff List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
     2. the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer date of:
        + 1. any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier’s Final Staff List; and/or
          2. any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier’s Final Staff List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
     3. any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier’s Final Staff List arising from or connected with any failure by the Replacement Supplier and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer date;
     4. any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier’s Final Staff List on or after their transfer to the Replacement Supplier or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier’s Final Staff List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer date as a result of or for a reason connected to such proposed changes;
     5. any statement communicated to or action undertaken by the Replacement Supplier or Replacement Subcontractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier’s Final Staff List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
     6. any proceeding, claim or demand by His Majesty’s Revenue and Customs or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
        + 1. in relation to any Transferring Supplier Employee identified in the Supplier’s Final Staff List, to the extent that the proceeding, claim or demand by His Majesty’s Revenue and Customs or other statutory authority relates to financial obligations arising after the Service Transfer date; and
          2. in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier’s Final Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Subcontractor, to the Replacement Supplier or Replacement Subcontractor to the extent that the proceeding, claim or demand by His Majesty’s Revenue and Customs or other statutory authority relates to financial obligations arising after the Service Transfer date;
     7. a failure of the Replacement Supplier or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier’s Final Staff List in respect of the period from (and including) the Service Transfer date; and
     8. any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier’s Final Staff List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.
  5. The indemnities shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations.

12/08/2013

12/08/2013

**Annex 8**

**Change**

1. Variation Procedure
   1. Subject to the provisions of this Annex 8 and Annex 13, either Party may request a variation to this Agreement provided that such variation does not amount to a material change of this Agreement within the meaning of the Concession Contract Regulations 2016 and the Law. Such a change once implemented is hereinafter called a "Variation".
   2. A Party may request a Variation by completing, signing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
   3. The receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the Services and the proposed Variation.
   4. In the event that:
      1. the Supplier is unable to agree to or provide the Variation; and/or
      2. the Parties are unable to agree a change to the Charges that may be included in a request of a Variation or response to it as a consequence thereof,

the Authority may:

* + 1. agree to continue to perform its obligations under this Agreement without the Variation; or
    2. terminate this Agreement with immediate effect, except where the Supplier has already fulfilled part or all of the Services ordered in accordance with this Agreement or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Agreement, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
  1. If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Agreement.

1. Legislative Change
   1. The Supplier shall neither be relieved of its obligations under this Agreement nor be entitled to an increase in the Charges as the result of a:
      1. general change in Law; or
      2. Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the commencement date of this Agreement (as set out in the Award Letter).
   2. If a Specific Change in Law occurs or will occur during the Term (other than as referred to in paragraph 2.1.2 above, the Supplier shall:
      1. notify the Authority as soon as reasonably practicable of the likely effects of that change including:
         * 1. whether any Variation is required to the provision of the Services, the Charges or this Agreement; and
           2. whether any relief from compliance with the Supplier's obligations is required including any obligation to achieve a Milestone and/or target; and
      2. provide to the Authority with evidence:
         * 1. that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Subcontractors;
           2. as to how the Specific Change in Law has affected the cost of providing the Services; and
           3. demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.
      3. Any change in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in paragraph 2.1.2(b) shall be implemented in accordance with the Variation Procedure.

12/08/2013

**Part 2: Variation Form**

No of order being varied:

……………………………………………………………………

Variation Form No:

……………………………………………………………………………………

BETWEEN:

|  |
| --- |
| **His Majesty’s Treasury** ("**the Authority"**)  and  [***insert name of Supplier***] (**"the Supplier"**) |

1. This Agreement is varied as follows:
   1. ***[insert details of variation]***
2. This Variation must be agreed and signed by both Parties and shall only be effective from the date it is signed by the Authority.
3. Words and expressions in this Variation shall have the meanings given to them in this Agreement.
4. This Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.
5. 12/08/2013

Signed by an authorised signatory for and on behalf of the Authority

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |
|  |  |

Signed by an authorised signatory to sign for and on behalf of the Supplier

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |

12/08/2013

**Annex 9**

**Governance**

1. Introduction
   1. This schedule describes the structure and various bodies who shall enforce appropriate governance in respect of this Agreement.
   2. The Supplier agrees to carry out such obligations and duties, and provide such co-operation and support, as may be required in order to properly support those bodies it participates in and to enable them to fully perform their functions in accordance with the requirements of this Agreement.
   3. All bodies will have agreed terms of reference which supplement the information contained in this Annex 9. These terms of reference will confirm specific responsibilities on each of the parties involved in the governance bodies. These terms of reference will be agreed by the Parties in good faith promptly following the Commencement Date as specified in the Award Letter and thereafter may be updated from time to time.
2. Business Case Accreditation, Examination and Training Services Joint Management Board
   1. In this Annex “Business Case Accreditation, Examination and Training Services Joint Management Board” or “JMB” shall mean a body in respect of which a meeting has been called by the Authority in accordance with paragraphs 2.2.2 or 2.2.3 for one or more of the purposes set out in paragraph 2.2.1 and where those of the JMB Required Attendees (as defined below) who represent the Authority are in attendance.
   2. Purpose of the JMB
      1. To set the strategic direction (in line with the Authority’s requirements) and manage the high-level (strategic) issues for the overall management of the whole of the commercial arrangements covered by agreements appointing the Official Publisher and Supplier.
      2. The JMB shall meet quarterly unless it determines that fewer meetings are required.
      3. The Authority shall give the JMB Required Attendees not less than two weeks’ notice of any proposed meeting of the JMB save for in circumstances which:
         * 1. the Authority reasonably considers to be exceptional;
           2. when the JMB Required Attendees will be required to attend a JMB after not less than five (5) Working Days of notice of any proposed meeting of the JMB being given.
   3. In this schedule JMB “Required Attendees” shall mean the attendees set out below in paragraphs 2.3.1 and 2.3.2 below:
      1. Full members
         * 1. Two Authority representatives; one HM Treasury, one Welsh Government;
           2. a director of the Supplier;
      2. Supporting roles
         * 1. the Authority Agreement manager
           2. the Supplier’s Agreement manager
           3. Secretariat: to be provided by the Supplier
           4. such other attendees as the Authority considers necessary to support the agenda
      3. Responsibilities
         * 1. Set future direction, agree business and (annual) marketing plans. Then monitor performance against these plans.
           2. Manage business/commercial risk against the key commercial principles and monitor risk handling of operational risks.
           3. To monitor and direct implementation of agreed shared services.
           4. Monitor realisation of benefits against the key commercial principles.
           5. Monitor the Supplier’s performance through quarterly reports.
           6. Confirm approach to intellectual property management is effective and review effectiveness of IPR operation.
           7. Resolve issues escalated from subordinate boards/bodies.
           8. Manage disbursement of the Programme Fund (as defined in Schedule 9)
           9. Review first and subsequent annual reports of the state of the business, business and marketing plans for the coming year (and if relevant beyond that).
           10. Agree the timing of introduction of changes in syllabus content or other relevant training material including the Glossary resulting from requests by the Authority.
           11. The JMB will also oversee management of operations and ensure that services are delivered to the level agreed within the contract.
           12. To ensure that IPR activity is business-led in accordance with the direction of the Joint Management Board.
           13. To ensure that the relevant Authority Intellectual Property Rights and Trade Marks and Crown Copyright material is being that created and protected in a manner which conforms to the intellectual property policies of the Authority and the Office of Public Sector Information (“**OPSI**”).
           14. To ensure Crown Copyright delegation provided to the Authority from OPSI is being appropriately governed and used through the rights passed on to the Supplier and Official Publisher.
           15. Ensure intellectual property is managed appropriately through this Agreement and the agreement between the Authority and the Supplier
           16. The Authority/OPSI to agree content of sub-licences, concessionaires to adopt them. These licences can be amended through the JMB (and the change control procedures).
3. Governance
   1. Governance arrangements:
      1. In the event that any or all of the JMB Required Attendees representing the Supplier fail to attend a JMB meeting the attendees present from the Authority may proceed with the meeting and may take decisions in accordance with this Agreement notwithstanding the absence of Required Attendees representing the Supplier.
      2. In the event that the JMB Required Attendees representing the Authority are absent from any purported JMB meeting, the meeting will be deemed not to be quorate and shall be incapable of making decisions or exercising discretions in accordance with this Agreement
4. Miscellaneous

4.1 Without prejudice to the Authority's right to require attendance by giving the minimum notice periods in paragraphs 2.2.2 and 2.2.3, the Authority and the Supplier will agree and maintain a 12 Month rolling schedule of times and dates of meetings which will take account of the interaction between the bodies to ensure continuity of attendance by key individuals and timely decision making

1. Approval Procedures
   1. Agreement Materials Maintenance
      1. Provided that any modifications or revisions to any approved Agreement Materials do not comprise anything other than:
         * 1. the correction of spelling, typographical, grammatical or similar mistakes within a product; and/or
           2. common glossary term changes; and/or
           3. a change to the typographical arrangement or format of a product, or a new typographical arrangement or format of the product;
           4. in respect of Services, where such modifications or revisions are necessary to provide the Service in accordance with this Agreement and/or to ensure that the Service continues to operate without a reduction in the quality of service (e.g. website maintenance/provision);

(collectively referred to as “**Maintenance**”), then the Supplier shall be permitted to make such revisions and modifications without a requirement for further approval of the same by the Authority pursuant to this schedule, unless otherwise notified by the Authority. For the avoidance of doubt, the development of any translation of any Agreement Material shall not be regarded as Maintenance of that Agreement Material and shall require the Authority’s approval in accordance with this schedule.

* + 1. All New Agreement Materials/revised Agreement Materials and Development Proposals and all revisions to any Agreement Materials which are outside the scope of such Maintenance shall require the Authority’s approval in accordance with this schedule.
  1. Approval in Principle
     1. If the Supplier or the Authority identifies a development opportunity for New Agreement Materials it shall (in the case of the Supplier) or may (in the case of the Authority) make a Development Proposal to the other including all relevant details concerning the realisation of such opportunity including whether development of the proposed work is to be commissioned and managed:
        + 1. by the Supplier at the Supplier's cost as a Supplier Commission; or
          2. as an Authority Commission which will be developed either by the Authority or by the Supplier at the Authority’s cost (where the Authority’s funding is expected to be achieved by assigning this activity as an attributable cost through the Authority Revenue (Annex 13 to this Agreement); or
          3. where the New Agreement Material is proposed to be a joint commission, this will be designated as a Supplier Commission with the parties clearly identifying the arrangements for any Authority contribution and funding which the Authority might agree to supply.
     2. For the avoidance of doubt for the purposes of this schedule, the following assumptions shall apply to
        + 1. New Agreement Material includes publication of a new Derivative Material or Publication Translation whether printed on paper or distributed electronically in any digital medium or online; and
          2. any qualification scheme relating to the Business Case Accreditation, Examination and Training Services and the related Syllabi, will always be deemed to be a Supplier Commission unless the parties expressly agree otherwise.
     3. In respect of all types of Agreement Materials, both the Supplier Commissions and the Authority Commissions may incorporate works of authors/developers who are not employees of the relevant commissioning Party. It shall be the responsibility of that commissioning Party to obtain (and in cases other than where the author/developer is an employee of the Crown to obtain an assignment by the author/developer direct to the Authority of) the appropriate rights to any works to be incorporated as part of the Agreement Materials by such author/developer, in order to enable full compliance with Annex 5 of this Agreement.
     4. Promptly following delivery of any Development Proposal, the Supplier and the Authority shall discuss such Development Proposal in good faith and may modify it as they both agree. The Parties shall agree the categorisation of such Development Proposal as being either a proposal for development of Accreditation Materials (such as a qualification scheme, Syllabi), a Translation, Derivative Materials or a service.
     5. The Supplier shall use its reasonable endeavours to develop in accordance with the requirements of this Schedule 10 (and thereafter develop, market and distribute any resulting New Agreement Material), all Development Proposals relating to any of the following types of Agreement Material:
        + 1. new Accreditation Materials; and
          2. revised, updated or upgraded Accreditation Materials;

with any such Development Proposal being referred to as a "**Mandatory Development Proposal**" and any other type of Development Proposal being referred to as a "**Non-Mandatory Development Proposal**" in this Agreement.

* + 1. The Authority or the Supplier (as appropriate) shall within 30 (thirty) days of receipt by it of any Non-Mandatory Development Proposal from the other Party (or within such longer period as they may both agree) notify the other in writing whether or not it agrees such proposal should be progressed in accordance with this schedule.
    2. With respect to any Non-Mandatory Development Proposal agreed pursuant to paragraph 5.2.6 of this schedule, and all Mandatory Development Proposals, the Supplier shall within 30 (thirty) Working Days of receipt of notice of such agreement or in the case of Mandatory Development Proposals, within 30 (thirty) Working Days of receipt of such proposal, produce and deliver to the Authority a draft Agreement Material description (“**Development Description”**) and a draft development timetable for the proposed new work (“**Development Timetable”**). Such draft Development Description shall be in the form set out in paragraph 5.2.10 below. Such draft Development Timetable shall be in the form set out in paragraph 5.2.11 below. Any draft Development Timetable shall include (without limitation) the timing and detail of all relevant events leading to final deployment of the Agreement Material. The Supplier shall provide the Authority with not less than 2 (two) months’ notice of deployment of any New Agreement Material.
    3. Any draft Development Description and draft Development Timetable shall be tabled at the next JMB meeting. If the draft Development Description and draft Development Timetable fully and accurately set out all elements required to the satisfaction of the Authority’s contract manager, and are otherwise acceptable to the Authority’s contract manager, then the Authority shall approve such drafts no later than the following JMB meeting. Upon such approval, the Development Proposal shall be deemed approved "in principle" and the Parties shall perform their respective obligations with regard to it in accordance with the remaining provisions of this annex and any other applicable terms of this Agreement.
    4. If, with respect to any Non-Mandatory Development Proposal made by the Authority, the Supplier either:
       - 1. notifies the Authority pursuant to paragraph 5.2.6 of this annex that it does not wish to proceed with such Development Proposal; or
         2. fails to confirm within the time period stipulated in paragraph 5.2.6 of this annex that it wishes to proceed with the same,

(or, with respect to any Mandatory Development Proposal where the Supplier is in breach of its obligations hereunder relating to the same) then, without prejudice to any other rights or remedies that the Authority may have, the Authority shall be entitled to develop and deploy the proposed Agreement Material comprised in such Development Proposal (being referred to in this Agreement as a “**Non Accepted Material”**) either itself, or authorise any third party to do so, and such Non Accepted Material shall not form part of the Agreement Materials for the purposes of this Agreement unless the Authority expressly requires otherwise in writing.

* + 1. The Development Description (as set out in Annex 3) for any proposed New Agreement Material shall conform to a Business Case Accreditation, Examination and Training Services product description. The Development Description will be used to confirm the nature of the Authority obligations (if any) and involvement in the development process including confirmation of any required inputs by the Authority (such as the Authority quality reviews).
    2. The Development Timetable (as set out in Annex 3) for any New Agreement Material shall conform to the Business Case Accreditation, Examination and Training Services product description for a plan.
  1. Agreement Material Approval
     1. Once a Development Proposal has been approved "in principle" by the Authority and the Supplier in accordance with paragraph 5.2 of this annex and its sub-paragraphs, the Supplier (for all Supplier Commissions and relevant Authority Commissions) shall proceed with producing and/or commissioning the relevant Agreement Material in accordance with the Development Timetable and shall ensure that the Agreement Material shall comply with the Development Description, with all the requirements for the Agreement Material set out in paragraphs of Annex 3 and with all other relevant requirements of this Agreement.
     2. The Supplier will report progress on all development activity to the JMB. The Supplier shall provide the Authority with drafts of the Agreement Material at the stages or intervals as indicated in the Development Description and, in any event, from time to time upon reasonable request from the Authority.
     3. It is the responsibility of the Supplier to ensure that all Agreement Materials produced further to a Development Proposal shall comply with the Quality Standards, which includes as a minimum requirement that the Supplier shall:
        + 1. ensure that no part of that Agreement Material is inaccurate, obscene, defamatory, blasphemous or is not otherwise in accordance with any applicable law;
          2. confirm that such Agreement Material meets the agreed Development Description (and shall provide evidence, upon request, of the quality process adopted to ensure this);
          3. take into account any comments which the Authority may have with regard to the Agreement Material and provide commentary on the acceptance and rejection of such comments; and
          4. amend the Agreement Material to the extent that the Authority reasonably believes the same does not meet the Quality Standards or any other applicable aspect of this Agreement.
     4. With respect to any Agreement Material which is intended to become Core Reference Material, the Supplier shall:
        + 1. incorporate any content or materials which the Authority reasonably requires the Supplier to include in such Agreement Material;
          2. make any modifications or revisions to the content or materials of the Agreement Material which the Authority reasonably requires the Supplier to include; and
          3. not seek to publish or market the Agreement Material in any way until such time as the Authority has finally approved the Agreement Material in accordance with paragraph 5.3.8 of this annex.
     5. With respect to any Agreement Material which is intended to become a Derivative Material, the Supplier shall:
        + 1. remove any Core Content which the Authority reasonably requires it to remove from the Agreement Material; and
          2. ensure that such Agreement Material is clearly identified as a Derivative Material and thereby distinguishing it from Core Reference Material.
     6. With respect to any Agreement Material which is intended to become a Translation, the Supplier shall provide evidence of independent quality assurance in respect of the organisation and/or individuals performing the Translation and the Translation itself, from a source which is qualified to confirm that the Translation is compliant with Good Industry Practice.
     7. With respect to any Agreement Material which is intended to become a Marketing Material, the Supplier shall ensure that it reflects and takes into consideration the cultural needs of the territory where it is to be used, and specifically that it complies with national and local advertising ethics and law and any other laws which may be applicable.
     8. The Supplier shall provide to the Authority upon request any relevant information regarding the Development Description and adherence of the Agreement Material to the Quality Standards and, on request by the Authority, a copy of the final Agreement Material. The information is to be provided to the appropriate JMB meeting. The Authority shall provide the decision concerning approval at or before the following JMB meeting or such other period of time as may be mutually agreed in writing. The decision to approve or reject will be formally confirmed at the appropriate JMB meeting (and minuted). The Authority’s approval for the deployment of such Publication will not to be unreasonably withheld.
     9. Notwithstanding any active or passive approval by the Authority of any Agreement Material, its Development Description and/or Development Timetable, the Supplier shall retain full editorial responsibility for all materials and content (other than any Core Content in the Existing Publications) comprised within the Agreement Material and for the compliance of the same with all requirements of this Agreement.
  2. Removing an Agreement Material
     1. Where an Agreement Material no longer supports its intended purpose, and where it is not possible to revise the Agreement Material to do so then the Supplier or the Authority may identify that this is the case and notify the other Party. In such case, the Supplier or the Authority will document in the notification the following:
        + 1. why such Agreement Material is now considered to be redundant;
          2. the considered impact within the marketplace and on the reputation of the Authority and/or the Authority Brands and details of the impact of and any damage of retaining/removing the Agreement Material;
          3. the considered impact within the marketplace and on the reputation of the Authority and/or the Authority Brands and details of the impact of and any damage of retaining/removing the Agreement Material;
          4. the proposed timetable for removing the Agreement Material (“**Removal Timetable**”) identifying communications requirements to inform customers appropriately.
     2. The Authority will decide and inform the Supplier at the following JMB meeting whether removal of the Agreement Material is appropriate. The Authority will take into account the Supplier's views and not act unreasonably in coming to a decision. If the Authority agrees to the removal of the Agreement Material, the Authority and the Supplier will agree their respective responsibilities under the Removal Timetable and, once they have been formally agreed in writing, will then execute those responsibilities in accordance with the same.

12/08/2013

**Annex 10**

**Reporting, Records and Open Book**

1. General Requirements
   1. The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Authority in accordance with the Joint Management Board’s requirements.
2. Management Information and Format
   1. The Supplier agrees to provide timely, full, accurate and complete MI Reports to the Authority which incorporates the data, in the correct format, required by the MI Reporting Requirements. The initial MI Reporting Requirements are set out in Part 2 of this Annex 10.
   2. The Authority may from time to time make changes to the MI Reporting Requirements including to the data required or format of the report and issue replacement MI Reporting Requirements to the Supplier. The Authority shall give notice in writing of any such change to the MI Reporting Requirements and shall specify the date from which the replacement MI Reporting Requirements must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.
   3. If the MI Reporting Requirements are amended by the Authority at any time, then the Supplier agrees to provide all future MI Reports in accordance with the most recent MI Reporting Requirements issued by the Authority.
   4. The Authority may provide the Supplier with supplemental guidance for adhering to the MI Reporting Requirements or submitting MI Reports from time to time which may for example indicate which information is mandatory and which is optional. The Supplier agrees to complete the MI Report in accordance with any such guidance.
   5. The Supplier may not make any amendment to the current MI Reporting Requirements without the prior Approval of the Authority.
   6. The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Supplier is required to supply to the Authority.
3. Frequency and Coverage
   1. All MI Reports must be completed by the Supplier adhering to the MI Reporting Requirements and returned to the Authority on or prior to the Reporting Date every Quarter during the Term and thereafter, until all transactions relating to this Agreement have permanently ceased.
   2. The MI Report should be used (among other things) to report on the areas of business set out in paragraph 9 of Annex 3.
   3. The Supplier must return the MI Report for each Quarter even where there are no transactions to report in the relevant Quarter (a "Nil Return").
   4. The Supplier must inform the Authority of any errors or corrections to the Management Information:
      1. in the next MI Report due immediately following discovery of the error by the Supplier; or
      2. as a result of the Authority querying any data contained in an MI Report.
4. Submission of the Quarterly MI Report
   1. The completed MI Report shall be completed electronically and returned to the Customer via email.
   2. The Customer reserves the right (acting reasonably) to specify that the MI Report be submitted by the Supplier using an alternative communication to that specified in paragraph 4.1 above. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.
5. Defective Management Information
   1. The Supplier acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Agreement because Management Information is used by the Authority to inform strategic decision making and allows it to calculate the Charges.
   2. Following an MI Failure, the Authority may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Authority. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.
6. Meetings
   1. The Supplier agrees to attend meetings between the Parties in person to discuss the circumstances of any MI Failure(s) at the request of the Authority (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Supplier shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Parties shall document these measures and continue to monitor the Supplier's performance.
7. Admin Fees
   1. If, in any rolling twelve (12) Month period, two (2) MI Failures occur, the Supplier acknowledges and agrees that the Authority shall have the right to invoice the Admin Fees in respect of any MI Failures as they arise in subsequent Months.
   2. If, following activation of the Authority’s right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph 7.1, the Supplier submits the MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Authority shall not be prevented from exercising such right again during the Term if the conditions in paragraph 7.1 are met.
   3. The Supplier acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Supplier failing to supply Management Information as required by this Agreement.
   4. The Authority shall notify the Supplier if any Admin Fees arise pursuant to paragraph 7.1 above and shall be entitled to invoice the Supplier for such Admin Fees which shall be payable in accordance with Annex 13 as a supplement to the Charges. Any exercise by the Authority of its rights under this paragraph 7.4 shall be without prejudice to any other rights that may arise pursuant to the terms of this Agreement.
8. Default
   1. If:
      1. Three (3) MI Failures occur in any rolling twelve (12) Month period;
      2. Three (3) consecutive MI Failures occur;

then a "MI Default" shall be deemed to have occurred.

* 1. If an MI Default occurs the Authority shall (without prejudice to any other rights or remedies available to it under this Agreement) be entitled to terminate this Agreement.

1. Records and Open Book
   1. The Supplier shall keep and maintain, until the later of seven (7) years after the date of termination or expiry of this Agreement or such other date as may be agreed between the Parties full and accurate records and accounts of the operation of this Agreement, including the Services provided under it, any Sub-Contracts and the amounts paid by the Authority.
   2. The Supplier shall
      1. keep the records and accounts referred to in paragraph 9.1 in accordance with Good Industry Practice and Law; and
      2. afford any Auditor access to the records and accounts referred to in paragraph 9.1 at the Supplier's premises and/or provide such records and accounts (including copies of the Supplier’s published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Term and the period specified in paragraph 9.1, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its Subcontractors of any of the Supplier’s obligations under this Agreement, including in order to:
         * 1. verify the accuracy of the Charges and any other amounts payable (including proposed or actual variations to them in accordance with this Agreement);
           2. verify the costs of the Supplier (including the costs of all Subcontractors and any third-party suppliers) in connection with the provision of the Services;
           3. verify the Open Book Data;
           4. verify the Supplier’s and each Subcontractor’s compliance with the applicable Law;
           5. identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
           6. identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Subcontractors or their ability to perform the Services;
           7. obtain such information as is necessary to fulfil the Authority’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
           8. review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
           9. carry out the Authority’s internal and statutory audits and to prepare, examine and/or certify the Authority’s annual and interim reports and accounts;
           10. enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
           11. review any performance monitoring reports and/or other records relating to the Supplier’s performance of the provision of the Services and to verify that these reflect the Supplier’s own internal reports and records;
           12. verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
           13. review any MI Reports and/or other records relating to the Supplier’s performance of the Services and to verify that these reflect the Supplier’s own internal reports and records;
           14. review the Supplier’s quality management systems (including any quality manuals and procedures);
           15. review the Supplier’s compliance with the standards;
           16. inspect the Authority Assets, including the Authority’s IPRs, equipment and facilities, for the purpose of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
           17. review the integrity, confidentiality and security of the Authority Personal Data.
   3. The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.
   4. Subject to the Supplier’s obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:
      1. all information within the scope of the Audit requested by the Auditor;
      2. reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services; and
      3. access to the Staff.
   5. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 9, unless the audit reveals a default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority’s reasonable costs incurred in relation to the Audit.

12/08/2013

**Annex 10**

**Part 2 - MI Reporting Requirements**

10.1 ATO’s with analysis by country and analysis of joiners and leavers, and the current pipeline of requests for accreditation.

10.2 Individual trainers by ATO with analysis by country and by examinations completed and with analysis of joiners and leavers and pipeline of requests.

10.3 Examination results monthly and in total with analysis by country and analysis of totals over time.

10.4 Financial reports showing the Supplier’s income from the scheme in total and by source for the quarter and the year and over the period of the contract.

10.5 Financial reports showing the Supplier’s costs in running the scheme in total and by source for the quarter and the year and over the period of the contract.

10.6 Financial reports showing the Supplier’s net profit or loss arising from the scheme in total and by source for the quarter and the year and over the period of the contract.

10.7 Financial reports showing income to the Authority’s programme fund arising from income generated by the scheme in total and by source for the quarter and the year and over the period of the contract.

10.8 Financial reports showing costs charged to the Authority’s programme fund arising from the scheme in total and by source for the quarter and the year and over the period of the contract.

10.9 Financial reports showing the net balance in the Authority’s programme fund arising from the scheme for the quarter and the year and over the period of the contract.

10.10 Any other reports or amendments to these reports that are requested by the Authority at the quarterly joint management meetings (overseen by the Joint Management Board - JMB, membership of this board determined by the Authority) between the Authority and Supplier.

**Annex 11**

**Guarantee**

[Insert the name of the Guarantor]

- and -

His Majesty’s treasury

DEED OF GUARANTEE

DEED OF GUARANTEE

**THIS DEED OF GUARANTEE** is made the day of 20[ ]

**BETWEEN**:

(1) [***Insert the name of the Guarantor***] [***a company incorporated in England and Wales***] with number [***insert company no.***] whose registered office is at [***insert details of the Guarantor's registered office here***] [***OR***] [***a company incorporated under the laws of [insert country***], registered in [***insert country***] with number [***insert number***] at [***insert place of registration***], whose principal office is at [***insert office details***](**“Guarantor”**); in favour of

(2) The Authority whose principal office is at 1 Horse Guards Road, Westminster, London SW1A 2HQ (**“Beneficiary”**)

**WHEREAS**:

(A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.

(B) It is the intention of the Parties that this document be executed and take effect as a deed.

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

1. Definitions and Interpretation

In this Deed of Guarantee:

* 1. unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
  2. references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
  3. unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
  4. references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
  5. the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
  6. unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
  7. unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
  8. unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
  9. references to clauses and schedules are, unless otherwise provided, references to clauses of and schedules to this Deed of Guarantee; and
  10. references to liability are to include any liability whether actual, contingent, present or future.

1. Guarantee and indemnity
   1. The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
   2. The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
   3. If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
      1. fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
      2. as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own Authority basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
   4. As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.
2. Obligation to enter into a new contract
   1. If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.
3. Demands and Notices
   1. Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:
      1. [***Address of the Guarantor in England and Wales***]
      2. [***Facsimile Number***]
      3. For the attention of [***insert details***]
      4. or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.
   2. Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
      1. if delivered by hand, at the time of delivery; or
      2. if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
      3. if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
   3. In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
   4. Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.
4. Beneficiary's protections
   1. The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
   2. This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
      1. it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
      2. it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
      3. if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
      4. the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
   3. The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
   4. The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
   5. The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
   6. Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
   7. Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.
5. Guarantor intent
   1. Without prejudice to the generality of Clause 5 (Beneficiary’s protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.
6. Rights of subrogation
   1. The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
      1. of subrogation and indemnity;
      2. to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier’s obligations; and
      3. to prove in the liquidation or insolvency of the Supplier,
      4. only in accordance with the Beneficiary’s written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.
7. Deferral of rights
   1. Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
      1. exercise any rights it may have to be indemnified by the Supplier;
      2. claim any contribution from any other guarantor of the Supplier’s obligations under the Guaranteed Agreement;
      3. take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
      4. demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
      5. claim any set‑off or counterclaim against the Supplier;
   2. If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.
8. Representations and warranties
   1. The Guarantor hereby represents and warrants to the Beneficiary that:
      1. the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
      2. the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
      3. the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
         * 1. the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
           2. any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
           3. the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
      4. all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
      5. this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.
9. Payments and set-off
   1. All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
   2. The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
   3. The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.
10. Guarantor's acknowledgement
    1. The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.
11. Assignment
    1. The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
    2. The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.
12. Severance
    1. If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.
13. Third party rights
    1. A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
14. Governing Law
    1. This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
    2. The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
    3. Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
    4. The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[***Insert name of the Guarantor***] acting by [***Insert/print names***]

Director

Director/Secretary

**Annex 12**

**Part A**

**Supply Chain Rights and Protection**

* 1. Appointment of Subcontractors
     1. The Supplier shall exercise due skill and care in the selection of any Subcontractors to ensure that the Supplier is able to:
        1. manage any Subcontractors in accordance with Good Industry Practice;
        2. comply with its obligations under this contract in the delivery of the Services; and
        3. assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this contract.
     2. Prior to sub-contacting any of its obligations under this contract, the Supplier shall notify the Authority and provide the Authority with:
        1. the proposed Subcontractor’s name, registered office and company registration number;
        2. the scope of any Services to be provided by the proposed Subcontractor; and
        3. where the proposed Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-Contract has been agreed on "arm’s-length" terms.
     3. If requested by the Authority within ten (10) Working Days of receipt of the Supplier’s notice issued pursuant to Clause 1.1.2, the Supplier shall also provide:
        1. a copy of the proposed Sub-Contract; and
        2. any further information reasonably requested by the Authority.
     4. The Authority may, within ten (10) Working Days of receipt of the Supplier’s notice issued pursuant to Clause 1.1.2 (or, if later, receipt of any further information requested pursuant to Clause 1.1.3), object to the appointment of the relevant Subcontractor if they consider that:
        1. the appointment of a proposed Subcontractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Authority under this contract;
        2. the proposed Subcontractor is unreliable and/or has not provided reasonable services to its other customers; and/or
        3. the proposed Subcontractor employs unfit persons,

in which case, the Supplier shall not proceed with the proposed appointment.

* + 1. If:
       1. the Authority has not notified the Supplier that it objects to the proposed Subcontractor’s appointment by the later of ten (10) Working Days of receipt of:
          1. the Supplier’s notice issued pursuant to Clause 1.1.2; and
          2. any further information requested by the Authority pursuant to Clause 1.1.3; and
       2. the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority in accordance with Clause 1.2 (Appointment of Key Subcontractors),

the Supplier may proceed with the proposed appointment.

* 1. Appointment of Key Subcontractors
     1. The Authority has consented to the engagement of the Key Subcontractors listed in Part B Key Subcontractors.
     2. Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Subcontractor, it must obtain the prior written consent of the Authority (the decision to consent or otherwise not to be unreasonably withheld or delayed). The Authority may reasonably withhold its consent to the appointment of a Key Subcontractor if it considers that:
        1. the appointment of a proposed Key Subcontractor may prejudice the provision of the Services or may be contrary to its interests;
        2. the proposed Key Subcontractor is unreliable and/or has not provided reasonable services to its other customers; and/or
        3. the proposed Key Subcontractor employs unfit persons.
     3. The Supplier shall provide the Authority with the following information in respect of the proposed Key Subcontractor:
        1. the Key Sub-Contract price expressed as a percentage of the total projected contract charges over the contract period; and
        2. the credit rating of the Key Subcontractor as provided by Dun and Bradstreet.
     4. Except where the Authority has given its prior written consent under Clause 1.2.1, the Supplier shall ensure that each Key Sub-Contract shall include:
        1. provisions which will enable the Supplier to discharge its obligations under this Contract;
        2. a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Authority;
        3. a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Supplier;
        4. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority or any Replacement Supplier;
        5. obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under this contract in respect of:
           1. data protection requirements set out in (Security Requirements), (Protection of Authority Data) and Annex 1 (Clause 14) Protection of Personal Data;
           2. FOIA requirements set out in Annex 1 (Clause 13) Freedom of Information;
           3. the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Annex 1 (Clause 3) Supply of Services);
           4. the keeping of records in respect of the Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data;
           5. the conduct of audits set out in Annex 10 Reporting, Records and Open Book;
        6. provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Annex 1 (Clause 17) Termination;
        7. a provision restricting the ability of the Key Subcontractor to Sub-Contract all or any part of the provision of the Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Authority;
        8. a provision, where a provision in Annex 7 (Clause 12)Staff Transfer imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Subcontractor to provide such indemnity, undertaking or warranty to the Authority, Former Supplier or the Replacement Supplier as the case may be.
  2. Supply Chain Protection
     1. The Supplier shall ensure that all Sub-Contracts contain a provision:
        1. requiring the Supplier to pay any undisputed sums which are due from it to the Subcontractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
        2. requiring that any invoices submitted by a Subcontractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
        3. conferring a right to the Authority to publish the Supplier’s compliance with its obligation to pay undisputed invoices within the specified payment period.
        4. giving the Supplier a right to terminate the Sub-Contract if the Subcontractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
        5. requiring a Subcontractor to advertise and award any of its own Sub-Contracts to the same extent as required of the Supplier, as set out at Clause 1.3.4; and
        6. requiring the Subcontractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 1.3.1; and
     2. The Supplier shall:
        1. pay any undisputed sums which are due from it to a Subcontractor within thirty (30) days from the receipt of a Valid Invoice;
        2. include within the Performance Monitoring Reports (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with this Clause 1.3.2, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.
     3. Any invoices submitted by a Subcontractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.
     4. The Supplier shall ensure that all Sub-Contracts, which the Supplier intends to procure following the date of this contract and which the Supplier has not, before the date of this contract, already awarded to a particular Subcontractor, are advertised and awarded following a fair, transparent and competitive process proportionate to the nature and value of the Sub-Contract.
     5. Notwithstanding any provision of Annex 1 (Clause 12) Confidentiality, Transparency if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Subcontractor’s invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
  3. Cyber Essentials Scheme
     1. The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials Data contain provisions no less onerous on the Subcontractors than those imposed on the Supplier under this contract in respect of the Cyber Essentials Scheme under Clause.
  4. Termination of Sub-Contracts
     1. The Authority may require the Supplier to terminate:
        1. a Sub-Contract where:
           1. the acts or omissions of the relevant Subcontractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Annex 1 (Clause 17) Termination and/or
           2. the relevant Subcontractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Subcontractor’s obligations in relation to the Goods and/or Services or otherwise; and/or
        2. a Key Sub-Contract where there is a Change of Control of the relevant Key Subcontractor, unless:
           1. the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
           2. the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.
  5. Competitive Terms
     1. If the Authority is able to obtain from any Subcontractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Goods and/or Services, then the Authority may:
        1. require the Supplier to replace its existing commercial terms with its Subcontractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
        2. subject to Clause 1.5 (Termination of Sub-Contracts), enter into a direct agreement with that Subcontractor or third party in respect of the relevant item.
     2. If the Authority exercises the option pursuant to Clause 1.6.1, then the contract charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
     3. The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
        1. the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods and/or Services; and
        2. any reduction in the contract charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.
  6. Retention of Legal Obligations
     1. Notwithstanding the Supplier's right to Sub-Contract pursuant to this Annex 12 Supply Chain Rights and Protection, the Supplier shall remain responsible for all acts and omissions of its Subcontractors and the acts and omissions of those employed or engaged by the Subcontractors as if they were its own.

**Annex 12**

**Part B**

**Key-Subcontractors**

Please see the below embedded Key-Subcontractors Template

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Annex 13

The Authority Revenue

Part 1 – Revenue Payments

1. General
   1. With respect to each Revenue Period from the contract Award Date and for the remaining duration of the Term, the Supplier shall pay to the Authority Revenue Due for that period, being:

25% of gross income for;

every successful foundation course examination that is taken by trainees;

every successful practitioner’s course examination;

except for examinations taken by candidates attending in house courses run by HM Treasury and/or the Welsh Government Treasury directly, such courses being free of examination fees;

each day where the Chief Examiner role is fulfilled by the Authority

minus any costs incurred and to be recovered from the Authority Revenue Due, as agreed by the Better Business Case Combined Management Board (as set out in Annex 9, Clause 2).

Payment to be made into the Programme Fund monthly and to be shown in quarterly reports to the Authority as part of the monitoring arrangements for the Joint Management Board.

* 1. The Supplier shall make Payments from the Programme Fund as required by the Authority. Such payments shall be:
     + 1. based upon a written report of the available Programme Fund produced by the Supplier, and agreed in writing by the Authority; and
       2. otherwise as agreed in writing between the parties from time to time.
  2. The Authority shall submit an invoice to the Supplier for each payment on account as required.
  3. The Supplier shall make payment to the Authority for amounts due under this Agreement within thirty (30) days of receipt from the Authority (at the Supplier’s nominated address for invoices) of a Valid Invoice from the Authority.
  4. The Supplier shall arrange:
     1. the collection of and the accounting for all fees; and
     2. the payment of and the accounting for all charges

from all relevant parties in connection with the performance of the Services.

* 1. Within six (6) weeks of the end of each Authority Year the Supplier shall conduct an annual reconciliation of the total amount on account payments made to the Authority during that Authority Year, against the actual aggregate Authority Revenue Due during that Authority Year under this Agreement.
  2. Any payment due to the Authority consequent upon each reconciliation specified in paragraph 1.6 above shall be notified forthwith to the Authority and Welsh Government in writing and paid forthwith by the Supplier upon presentation of an invoice from the Authority.
  3. Following any payment to the Authority pursuant to paragraph 1.7, the Supplier shall declare in the next financial report submitted to the Authority, the actual Authority Revenue Due to the Authority during the previous Authority Year as identified by the Supplier’s fully audited accounts, which shall be available at such time. A final reconciliation shall be conducted by the Supplier and declared within the next financial report to the Authority of the Authority Revenue Due calculated in accordance with paragraph 1.6 and paid to the Authority against the Authority Revenue Due identified by the fully audited accounts of the Supplier.
  4. Any payment due to the Authority consequent upon each final reconciliation specified in paragraph 1.7 above shall be paid forthwith by the Supplier upon presentation of an invoice from the Authority.
  5. All payments which are due to the Authority shall be paid by the Supplier exclusive of Value Added Tax (or any similar tax).

1. Currency
   1. The Supplier shall submit all payments due to the Authority under this Agreement denominated in sterling.
2. Indexation
   1. The fees charged for examinations and for accreditation both to individual trainers and to accredited training organisations at the start of the contract are set out in Annex 13. Such fees may not be increased without the agreement of the Authority which will take account of the reasonable need to allow for relevant cost inflation.

Annex 13

The Authority Revenue

Part 2 – Candidate Fees

The examination fees for UK examinations are:

* £111 for Foundation exams.
* £140 for Practitioner exams.

The following fees are to be agreed post contract award:

* Examination fees for international exams.
* Approving new Accredited Training Organisations.
* Accrediting new trainers in Accredited Training Organisations.

Annex 13

The Authority Revenue

Part 3 – List of Countries Pricing Bands

To following is to be agreed post contract award:

* List of countries into different pricing bands for the purposes of setting examination fees for international exams.