



Department  
for Education

## **Framework Agreement**

### **Modified Tests Framework 2023-2026**

**Agreement Number STA 0299**

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## FRAMEWORK AGREEMENT FOR MODIFIED TESTS SERVICES

This Framework Agreement is dated: **2<sup>nd</sup> February 2023**

### Parties

- 1) The Secretary of State for Education whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (“the Department”); and
- 2) The Supplier: VI Resourcing Ltd (trading as Connect), Alvaston Lodge, Nantwich CW5 6PF

### Background:

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

### Recitals

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

The Department's reference number for this Agreement is **STA 0299**.

## **1 Definition and Interpretation**

1.1 In this Agreement, the following words shall mean:

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

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

<b>Covid Event</b>	means a disruption to the delivery of a particular Test Cycle (including any cancellation in whole or in part) arising specifically from new UK government requirements, policy or laws or a change to the UK government requirements, policy or laws, in each case arising as a direct result of Covid-19 or a similar disease.
<b>Crown and/or Her Majesty</b>	Queen Elizabeth II and any successor to Her Majesty;
<b>Crown Body</b>	any department, office or agency of the Crown;
<b>Cyber Essential Certificate</b>	
<b>Data</b>	shall have the meanings given in the GDPR;
<b>Data Controller</b>	shall have the meanings given in the GDPR;
<b>Data Loss Event</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
<b>DPA 2018</b>	Data Protection Act 2018;
<b>Data Protection Impact Assessment</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>Data Protection Legislation</b>	(i) the UK GDPR as amended from time to time; (ii) the Data Protection Act 2018 as amended from time to time; (iii) Regulations made under the Data Protection Act 2018; and (iv) all applicable Law about the Processing of Personal Data;
<b>Data Protection Officer</b>	take the the meaning given in the GDPR;
<b>Data Subject</b>	take the meaning given in the GDPR;
<b>Data Subject Request</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>Default</b>	any breach by a Party of its obligations under this Agreement or of any warranty, condition or any other term or any default, act, omission, negligence, or

		misstatement of a Party or its employees, agents or subcontractors in connection with the subject matter of the Agreement;
<b>Delay</b>		the period of time by which the implementation of the Services by reference to the Implementation Plan is delayed arising from a failure to Achieve a Milestone;
<b>Department's Information</b>	<b>Confidential</b>	all Personal Data and any information that relates to the business, affairs, developments, trade secrets, Know-how, personnel, and suppliers of the Department, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
<b>Departmental Assets</b>		Departmental Premises, IT systems and information with a classification up to confidential;
<b>Departmental Standards</b>	<b>Security</b>	the Department's specification for security that the Supplier is required to deliver;
<b>Departmental Data</b>		all data or records of whatever nature and in whatever form: (i) supplied by or on behalf of the Department; or (ii) relating to the conduct of the tests, pupils, Markers, the Department's staff or otherwise relating to the operations or functions of the Department, or in relation to any Call-Off Contract or as created or processed as part of, or in connection with, the Services. For the avoidance of doubt, this excludes personal and sensitive information for, Supplier staff or other consultants used in the provision of the services;
<b>Departmental Dependencies</b>		in respect of a Call-Off Service, those activities specified in Schedule 3 (Departmental Dependencies) to be carried out by the Department or a Departmental Service Provider to facilitate the Supplier's provision of the Services;
<b>Departmental Materials</b>		all tests, test scripts, test items, test booklets and other project documentation delivered as part of the Services (including meeting minutes, project board reports and risk and issues logs) training materials, and other material of a similar nature produced by or on behalf of the Supplier for the Department, or in conjunction with the Department, under this Agreement (but excluding the Software);
<b>Departmental Procedures</b>	<b>Policies and</b>	the National Curriculum Assessments Policy, as amended or replaced from time to time by the Department;



<b>Departmental Premises</b>	those premises which are owned, leased or occupied by the Department from time to time;
<b>Departmental Security Policy</b>	the Department's security policies and procedures as updated, amended or replaced from time to time by the Department;
<b>Departmental Service Provider</b>	has the meaning give in Clause 11;
<b>Departmental Software</b>	the source code and object code of software (and any additions, modifications or developments thereto, whether made before or after the Effective Date) which is: (i) owned by the Department as at the Effective Date or as at the effective date of a Call-Off Contract; or (ii) developed or procured for the Department as the subject of a Call-Off Contract;
<b>Dispute</b>	any dispute or disagreement between the Parties arising out of or in connection with this Agreement (including in connection with any Call-Off Contract), including any question regarding the existence, validity or termination of this Agreement or a Call-Off Contract;
<b>EEA</b>	European Economic Area;
<b>Effective Date</b>	the date of this Agreement; 01/02/2023
<b>EIR</b>	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government department in relation to such regulations;
<b>Exit Phase</b>	in respect of the Agreement or a Call-Off Contract the period: (a) commencing on the day after the date on which the relevant Termination Notice (or any other notice given to terminate the Agreement or the Call-Off Contract) is served by either Party; and (b) ending on the date one month after the date of the termination of the Agreement or the Call-Off Contract (as appropriate);
<b>FOIA</b>	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>Force Majeure Event</b>	an act or event affecting the performance by a Party of its obligations hereunder: (a) arising from events beyond its reasonable control including disaster, fire, flood, pandemic, terrorist attack or an industrial dispute (other than one by the employees of the Supplier, its Group Companies or its Subcontractors and only where a substitute third party is not reasonably

	available); and (b) which could not have been avoided through the exercise of Good Industry Practice, provided that a Force Majeure Event shall not include any claim by a third party that any software, data or other materials provided by the Supplier or the Subcontractors infringes its Intellectual Property Rights;
<b>General Anti-Abuse Rule</b>	(a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs;
<b>Good Industry Practice</b>	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
<b>Good Industry Standard</b>	the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
<b>Government</b>	the government of the United Kingdom;
<b>HMRC</b>	Her Majesty's Revenue & Customs;
<b>HMSO</b>	Her Majesty's Stationery Office;
<b>ICT</b>	information and communications technology;
<b>Information</b>	as defined in section 84 of the FOIA;
<b>Insolvency Event</b>	the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity:  (a) the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;  (b) the appointment of an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the entity's undertaking, assets, rights or revenue;  (c) the entity entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes

steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors;

(d) the entity being unable to pay its debts or being [capable of being] deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(e) the entity entering into any arrangement, compromise or compromise or composition in satisfaction of its debts with its creditors;

However, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event and amalgamation shall not amount to an Insolvency Event;

**Insurance Policies**

has the meaning given in Clause 25 (Insurance and Liability);

**Intellectual Property Rights**

means patents, trademarks, service marks, utility models, inventions, logos, (whether registrable or otherwise), applications for any of the foregoing, Copyright, domain names, Know-how, database rights, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

**Key Employees**

has the meaning given in Clause 16.3;

**Key Milestone**

in respect of a Call-Off Contract, an event or task, as described in the Call-Off Contract, which is expressed in the Call-Off Contract to be a Key Milestone;

**Know- how**

confidential and proprietary industrial and commercial information and techniques in any form including drawings, formulae, test results, reports, project reports and testing procedures, instruction and training manuals, tables of operating conditions, market forecasts, lists and particulars of the Department and suppliers;

**Law**

any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of Section 4(1) EU Withdrawal Act 2018 as amended by EU (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply

<b>Loss</b>	any awards, claims, compensation, costs, damages, demands, expenses, fines, loss, order, penalty and payment made by way of settlement, of whatsoever nature;
<b>Management Information</b>	the operational management information and performance reports to be provided by the Supplier to the Department, as specified in Schedule 4 and/or any Call-Off Contract in force from time to time,
<b>Milestone</b>	an event or task as set out in any Call-off Contract as a milestone including any Key Milestone;
<b>Milestone Date</b>	the scheduled date for completion set against a Milestone, in a Call-Off Contract;
<b>MoR</b>	the best practice guidance for effective management of risk as issued and updated by the Government from time to time;
<b>NICs</b>	National Insurance Contributions;
<b>Ofqual</b>	the Office of the Qualifications and Examinations Regulator;
<b>Personal Data</b>	take the meanings given in the GDPR;
<b>Personal Data Breach</b>	shall have the meanings given in the GDPR;
<b>Personnel</b>	the Supplier's employees and agents, the Subcontractors and the employees, agents and subcontractors of the Subcontractors engaged in the provision of the Services;
<b>Personnel Security Standard</b>	a government wide requirement including checks on identity, employment history, nationality and immigration status and the declaration of unspent criminal records;
<b>Processor</b>	take the the meaning given in the GDPR;
<b>Process Document</b>	a document setting out processes and procedures used in the delivery of the Call-Off Service, including interfaces with Subcontractors, the Departmental Service Providers, stakeholders and other relevant third parties;
<b>Processing</b>	shall have the meanings given in the GDPR;
<b>Prohibited Act</b>	means:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Department a financial or other advantage to:

i) induce that person to perform improperly a relevant function or activity; or

ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement;

(c) an offence:

i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;

ii) under legislation or common law concerning fraudulent acts; or

iii) the defrauding, attempting to defraud or conspiring to defraud the Department;

(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the United Kingdom;

**Project Closure Report**

has the meaning given in Clause 28.2.1;

**Project Plan**

a plan setting out the resources, tasks and timescales required to be performed to mobilise and deliver the Call-Off Contract together with any revisions the Supplier proposes to make to the Milestone Dates set out in the Call-Off Contract;

**Property**

the property, other than real property, issued or made available to the Supplier by the Department in connection with the Agreement;

**Rate Card**

the rate card for Personnel as set out in Schedule 2;


**Regulations**

any laws, regulations, regulatory constraints, obligations or rules (including binding codes of conduct and binding statements of principle incorporated and contained in such rules) applicable to the existence or operation of this Agreement or the provision of any part of the Services from time to time;

**Regulatory Body**

those Government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this

	Agreement or any other affairs of the Department and "Regulatory Body" shall be construed accordingly;
<b>Regulatory Change</b>	has the meaning given in Clause 42;
<b>Relevant Requirements</b>	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>Request for Information</b>	a request for information or an apparent request under FOIA or the EIR received by the Department, the Supplier, the Subcontractors or another relevant Regulatory Authority or public body (as defined by FOIA) or public authority (as defined by the Environmental Information Regulations 2004);
<b>Security Plan</b>	the Supplier's security plan prepared as part of their tender and included in Schedule 8 to the Agreement;
<b>Security Policy</b>	the Department's Security Standards and Plan as updated from time to time;
<b>Service Commencement Date</b>	in relation to a Call-Off Contract, the date on which the relevant Call-Off Service shall commence, as specified in the Call-Off Contract;
<b>Service Element</b>	part of a Call-Off Service as identified in a Call-Off Contract and described in more detail in Schedule 1;
<b>Services</b>	the services the Supplier agrees to provide under this Agreement from time to time including any Call-Off Services;
<b>SME</b>	a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC;
<b>Software</b>	the Supplier Software, the Third Party Software and the Departmental Software;
<b>Source Code</b>	the computer programming code of the Software, in human-readable form and in such form that can be compiled or interpreted into equivalent object code, together with all technical information and documentation (including all specifications, input and output formats, algorithms and file structures) that are necessary for the use, reproduction, modification and enhancement of such software or that have been used for such purposes;
<b>SPF</b>	Government Security Policy Framework which sets out the standards, best practice guidelines and

	approaches that are required to protect UK government assets.
<b>Subcontract</b>	any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof;
<b>Subcontractor</b>	a subcontractor of the Supplier (including any of the Supplier's Group Companies) which performs part of the Service;
<b>Successor Operator</b>	an entity (which may include the Department) succeeding the Supplier in the provision or operation of services similar to the Services or any part thereof (including any Call-Off Service);
<b>Supplier Personnel</b>	all employees, agents and contractors of the Supplier and/or of any Subcontractor;
<b>Supplier Software</b>	the software used in the provision of the Services other than the Third Party Software and the Departmental Software, specifically excludes pre-existing Intellectual Property Rights and software including but not limited to Suppliers Register of Schools, Survey Admin System, School Portal and on-screen marking system;
<b>Supplier's Contract Manager</b>	
<b>Supplier System</b>	the computer systems used by or on behalf of the Supplier to provide all or part of the Services including the Software but excluding the Departmental System;
<b>Term</b>	the period from the Effective Date until the termination or expiry of the Agreement;
<b>Termination Notice</b>	a notice in writing, served by one Party on the other, in accordance with this Agreement to terminate this Agreement, a Call-Off Contract or a Service Element;
<b>Territory</b>	the United Kingdom (and the locations, to the extent outside the United Kingdom, of the British Forces Posted Overseas schools), it being understood that, insofar as the Services include the operation and maintenance of a website on which the Trade Marks are mentioned, no territorial restriction shall apply to the use of the Trade Marks on such website;
<b>Third Party Software</b>	any software used in the provision of the Services, the Intellectual Property Rights in which are owned by a third party;
<b>Time and Materials Basis</b>	that the cost of a service or activity shall be the sum of: (i) the labour costs of the Personnel engaged in the performance of that service or activity. Such sum

	<p>shall be equal to the amount of time directly and necessarily spent by such Personnel in the performance of such service or activity at the rates set out in the Rate Card (or in the absence of an appropriate rate in the Rate Card, at cost); plus</p> <p>(i) any payments to third parties directly and necessarily made in the performance of such service or activity. Such payments to be passed through without the addition of any margin or overhead by the Supplier and with the benefit of any volume or other related discount</p> <p>provided that:</p> <p>the Supplier must use Best Endeavours to use efficiently all resources chargeable to the Department in respect of that service or activity so as to minimise the cost to the Department;</p>
<b>Trade Marks</b>	<p>the registered and unregistered trademarks, names, logos and devices, brief particulars of which are set out in the Brand Guidelines or specified in writing by the Department from time to time;</p>
<b>UK GDPR</b>	<p>the General Data Protection Regulation (Regulation (EU) 2016/679) as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;</p>
<b>VAT</b>	<p>value added tax and any tax of a similar fiscal nature (including, without limitation, any tax of a similar fiscal nature imposed in addition to, or as a replacement for, such tax);</p>
<b>Virus</b>	<p>any “back door”, “time bomb”, “trojan horse”, “worm”, “drop dead device”, “virus” or other computer software routine intended or designed to:</p> <p>(i) disable, damage, erase, disrupt or impair the normal operation of; or</p> <p>(i) provide unauthorised access to or modification to,</p> <p>computer systems or any software or information stored on those computer systems</p>
<b>Work</b>	<p>any and all works including but not limited to literary, dramatic, musical or artistic works, sound recordings, films, broadcasts or cable programmes, typographical arrangements and designs (as the same are defined in the Copyright Act) which are created from time to time during the course of this Agreement by the Supplier or by or together with others at the Supplier's request or on its behalf and where such works directly relate to or</p>



are created in respect of the performance of this Agreement or any part of it;

**Working Day**

a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

- 1.2 References to “Clauses” and “Schedules” mean clauses of and schedules to this Agreement. The provisions of the Schedules shall be binding on the parties as if set out in full in this Agreement.
- 1.3 References to the singular include the plural and vice versa and references to any gender include both genders. References to a person include any individual, firm, unincorporated association or body corporate.
- 1.4 References to the “Parties” means the Department and the Supplier and their respective successors and permitted assigns. References to a “third party” or “third parties” shall not include the Group Companies of the Supplier.
- 1.5 If there is any conflict or ambiguity between any sections of the Agreement, the sections shall be applied in the following order of precedence: the Clauses; the Schedules; the Call-Off Contracts; and any other document referred to in this Agreement.
- 1.6 If the Supplier becomes aware of a conflict between a Call-Off Contract and any other part of this Agreement, the Supplier shall promptly notify the Department of such conflict and shall follow the Department’s instructions in connection with such conflict.

**2 Supplier Appointment**

- 2.1 The Supplier is appointed by the Department under this Agreement as a potential, non-exclusive provider of the Services and any other Modified Tests Services the Department may wish to purchase from time to time. Nothing in this Agreement prevents the Department or any persons connected with it from acquiring the Services or services similar to the Services from another supplier during the Term or from performing any such services for itself internally.

**3 Status of Supplier**

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

**4 Assignment**

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

**5 Third Party Rights**

- 5.1 This Agreement does not create any right or benefit enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999) except

for: (i) a person who is a permitted successor or assignee of the rights or benefits of a Party that may enforce such rights or benefits; and (ii) a Successor Operator.

## **6 Framework Commencement and Term**

- 6.1 This Agreement commences on the Effective date, 01/02/2023 and ends 4 years after the Effective Date unless terminated earlier in accordance with its terms.

## **7 Call-Off Contracts – Execution, Commencement and Term**

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

## **8 Services**

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

## **9 Supplier's Obligations**

- 9.1 The Supplier shall perform all of its obligations under this Agreement:
- 9.1.1 in accordance with any PIDs, Project Plans, Process Documents and Security Plans approved by the Department;
  - 9.1.2 in accordance with the Departmental Policies and Procedures and Good Industry Practice;
  - 9.1.3 substantially in accordance with appropriate project management standards; and
  - 9.1.4 in accordance with the Department's reasonable instructions, as contained in the Call-Off Contracts.
- 9.2 The Supplier shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.

## **10 Department's Obligations**

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

## **11 Departmental Dependencies**

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

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

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

(each a “**Department Delay**”)

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

## **12 Cooperation**

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

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

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

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

## **13 Changes to the Department's Requirements**

13.1 The Department shall notify the Supplier of any change to the Department's requirement under this Agreement.

13.2 The Supplier shall use Best Endeavours to accommodate any changes to the needs and requirements of the Department provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs to be agreed between the Parties in writing.

## **14 Amendment and variation**

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

**15 Change Control Procedures**

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

**16 Suppliers Employees and Sub-Contractors**

- 16.1 Subject to Clause 16.2, the Supplier shall not, without the Department's prior written consent, subcontract any of its rights and obligations under this Agreement. The Supplier shall maintain full details of its Subcontractors (including the services provided and how they are managed) and shall make such details available to the Department upon request.
- 16.2 The Department's consent to a Subcontractor will not relieve the Supplier of its obligations to the Department under this Agreement and the Supplier shall be fully responsible to the Department for the acts or omissions of its Subcontractors. Any obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Subcontractors and Personnel also do, or refrain from doing, such act or thing.
- 16.3 The Supplier shall give the Department on request a list of all persons who are or may be at any time directly concerned with the performance of this Agreement specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the Department may reasonably require.
- 16.4 The Supplier shall immediately notify the Department if they have any concerns regarding the propriety of any of its Subcontractors in respect of the Services.
- 16.5 If the Department notifies the Supplier that it considers that an employee or Subcontractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Agreement, then the Supplier shall, as soon as is reasonably practicable, take all such steps as the Department considers necessary to remedy the situation or, if required by the Department, remove the employee or Subcontractor from providing the Services and shall provide a suitable replacement (at no cost to the Department).
- 16.6 The Supplier shall take all reasonable steps to avoid changes of employees or Subcontractors assigned to and accepted to provide the Services under the Agreement except if changes are unavoidable or temporary. The Supplier shall give at least one month's written notice to the Contract Manager of proposals to change Key Employees or Subcontractors.
- 16.7 The Supplier shall use all reasonable endeavours to ensure that all its employees and Subcontractors who are not EU citizens are legally entitled to be resident in the UK and have a work permit, where applicable.
- 16.8 Where the Supplier enters into a contract with a Subcontractor for the purpose of performing its obligations under the Agreement it shall ensure prompt payment in accordance with this Clause 16.8. Unless otherwise agreed by the Department in writing, the Supplier shall ensure that any contract requiring payment to a Subcontractor shall provide for undisputed sums due to the Subcontractor to be made within:
- 16.8.1 10 days, where the Subcontractor is an SME; or
- 16.8.2 30 days either, where the Subcontractor is not an SME, or both the Supplier and the Subcontractor are SMEs.
- 16.9 The Supplier shall comply with such terms and shall provide, at the Department's request, sufficient evidence to demonstrate compliance.



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

## **18 Personnel Security Standard**

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

## **19 Branding of the Service**

- 19.1 From the Effective Date the Department grants the Supplier a non-exclusive royalty-free licence to use the Trade Marks during the Term in the Territory on or in relation to the tests or related materials as is necessary for the provision of the Services.
- 19.2 The right to use the Trade Marks is conditional on the Supplier's compliance with the Department's Brand Guidelines (as amended by the Department from time to time).
- 19.3 The Supplier shall not affix any trademarks (other than the Trade Marks) or other promotional information to any of the Departmental Materials (including tests and any marketing materials) without the Department's prior written consent
- 19.4 The Supplier shall give the Department on request representative samples of any materials, including test materials and marketing materials, on or in respect of which the Trade Marks are used.
- 19.5 This Clause 19 and the licence contained herein is personal to the Supplier. The Supplier shall not assign, transfer, sub-licence, mortgage, charge, or in any other way dispose of or purport to dispose of its rights or obligations under this Clause 19. Without prejudice to the generality of the foregoing, if the Supplier wishes a third party (a "**Sub-Licensee**") to use the Trade Marks, the Supplier shall obtain the Department's prior written consent to such sub-licence, and if consent is given, shall procure that the Sub-Licensee shall enter into a licence directly with the Department containing provisions substantially the

same as set out in this Clause 19 prior to the Sub-Licensee using the Trade Marks. The Supplier shall be responsible to the Department for the acts and omissions of its Sub-Licensees as if they were those of the Supplier.

- 19.6 Except as provided by this Clause 19, the Supplier shall not use the Trade Marks or the name of the Department or the Standards and Testing Agency.

## **20 Step in rights**

- 20.1 Without prejudice to DFE's rights of termination under clause 26 the DFE may exercise one or more of the rights set out in this clause 20 ("**Step In Rights**") if:

20.1.1 there is a Default by the Contractor which materially prevents or materially delays performance of the Services or any part of the Services;

20.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;

20.1.3 a Regulatory Body has advised the DFE that exercise by the DFE of its rights under this clause 20 is necessary;

20.1.4 a serious risk exists to the health and safety of persons, property or the environment;

20.1.5 it is necessary to discharge a statutory duty; or

20.1.6 the Contractor becomes insolvent.

- 20.2 If the DFE has a Step In Right it may serve notice on the Supplier (a "**Step-In Notice**") that it will take action under this clause 20 either itself or with the assistance of a third party.

- 20.3 The Step-In Notice shall set out:

20.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the "**Required Action**");

20.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor's Default;

20.3.3 the date on which it wishes to commence the Required Action;

20.3.4 the time period which it believes will be necessary for the Required Action

20.3.5 whether the DFE will require access to the Contractor's premises; and

20.3.6 to the extent practicable, the effect the DFE anticipates the Required Action will have on the Contractor's obligations to provide the Services during the period that the Required Action is being taken.

- 20.4 Following service of a Step-In Notice, the DFE shall;

20.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action.

- 20.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor
- 20.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the DFE is not assuming control; and
- 20.4.4 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.
- 20.5 For as long as and to the extent that the Required Action continues:
  - 20.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
  - 20.5.2 the DFE shall pay the Contractor the Charges after subtracting any applicable Service Credits and the DFE's costs of taking the Required Action.
- 20.6 If the Contractor demonstrates to the DFE's reasonable satisfaction that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the DFE not taken the Required Action, the DFE may adjust the Charges.
- 20.7 Before ceasing to exercise its Step In Rights the DFE shall deliver a written notice to the Contractor (a **"Step-Out Notice"**), specifying:
  - 20.7.1 the Required Action it has taken; and
  - 20.7.2 the date on which the DFE plans to end the Required Action subject to the DFE being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 20.8.
- 20.8 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the date specified in clause 20.7.2, develop for the DFE's approval a draft plan relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of the Contract.
- 20.9 If the DFE does not approve the draft plan, it shall inform the Contractor of its reasons for not approving it and the Contractor shall then revise the draft plan taking those reasons into account and shall re-submit the revised plan to the DFE for approval. The DFE shall not withhold or delay its approval of the draft plan unreasonably.
- 20.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 20, provided that the DFE shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-In action taken by the DFE under clauses 20.1.2 to 20.1.5 (insofar as the primary cause of the DFE serving the Step In Notice is identified as not being the result of a Contractor's Default).

## **21 Software, Data and Materials**

- 21.1 The Department hereby grants to the Supplier a non-transferable, non-exclusive, royalty-free, licence to use, modify, adapt and enhance Departmental Software (and any associated documentation) for the Term, solely to the extent reasonably necessary for the provision of the Services in accordance with the terms of this Agreement. All



Intellectual Property Rights in Departmental Software (including for the avoidance of doubt any modification, adaptation or enhancement thereto) shall remain with, or vest upon creation in, the Crown. At the Department's request, the Supplier shall execute, or procure from a relevant third party the execution of, any formal assignment or other document required to give effect to this Clause 21.1. The Supplier shall not obtain any right, title or interest to Departmental Software save as set out in this Clause 21.1. The Supplier shall provide a copy of the Source Code of Departmental Software and any associated documentation to the Department on request.

- 21.2 The Department hereby grants the Supplier a non-transferable, non-exclusive, royalty-free licence in relation to the Intellectual Property Rights in Departmental Data and Departmental Materials for the Term, solely to the extent reasonably necessary for the provision of the Services in accordance with the terms of this Agreement. All Intellectual Property Rights in Departmental Data and Departmental Materials shall remain with or vest in, the Crown. At the Department's request, the Supplier shall execute, or procure from a relevant third party the execution of, any formal assignment or other document required to give effect to this Clause 21.2. The Supplier shall not obtain any right, title or interest to Departmental Data or Departmental Materials save as set out in this Clause 21.2.
- 21.3 The Supplier shall use best endeavours to take such steps as the Department may require in order to enforce the Department's rights in relation to one or all of the Departmental Data, Departmental Software and Departmental Materials against third parties provided that the Department shall (subject to the immediately following sentence) reimburse the Supplier in respect of any costs reasonably incurred by the Supplier in taking such steps. In respect of any request (or sequence of requests relating to the same subject-matter), the Supplier shall obtain the Department's written consent before incurring total costs of over £1,000 in complying with this Clause 21.3 and acknowledges that if it fails to do so, it shall not be entitled to invoice the Department for the amount of such costs being in excess of £1,000.
- 21.4 The Supplier hereby grants, or shall procure the grant to, the Department and any Departmental Service Provider, a non-transferable, non-exclusive, royalty-free licence to use the Intellectual Property Rights in the Supplier Software and the Third Party Software for the Term and the Exit Phase to the extent reasonably necessary for the Department to receive the Services in accordance with this Agreement.
- 21.5 The licence in Clause 21.4 shall not apply to the extent that the terms of any Third Party Software prevent it being licensed to a Departmental Service Provider. In such a circumstance the Supplier shall use Best Endeavours, at the Department's cost and request, to amend the terms of the relevant Third Party Software licence to permit use by a Departmental Service Provider.
- 21.6 The Supplier shall hold the Department harmless against any reasonable costs, claims, demands, expenses and damages of whatsoever nature incurred by the Department, arising out of any claim that the use by the Department of any materials used or made available in the provision and receipt of the Services (the "**Indemnified Materials**") infringes the Intellectual Property Rights of any third party. For the avoidance of doubt, this indemnity shall not apply to:
- 21.6.1 any infringement of Intellectual Property Rights which arises from the use of the Indemnified Materials by the Department other than in accordance with the Supplier's reasonable instructions; or
- 21.6.2 any adaptation, modification or enhancement made by the Department to the Indemnified Materials without the Supplier's approval.

## **22 Escrow**

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

## **23 Intellectual Property Rights**

- 23.1 Subject to Clause 23.11, all Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patterns, models, designs or other material which is:
- 23.1.1 furnished to or made available to the Supplier by or on behalf of the Department;
  - 23.1.2 prepared by or for the Supplier on behalf of the Department for use, or intended use, in relation to the performance by the Supplier of its obligations under the Agreement; or
  - 23.1.3 the result of any work done by the Supplier, the Personnel or any Subcontractor in relation to the provision of the Services (together with Clauses 23.3 and 23.4 the "**IP Materials**")
- shall vest in the Crown and the Supplier shall not, and shall ensure that the Personnel shall not, use or disclose any IP Materials without the Department's written approval save to the extent necessary for performance by the Supplier of its obligations under the Agreement.
- 23.2 The Supplier hereby assigns to the Department, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clauses 23.1.2 and 23.1.3. This assignment shall take effect on the Effective Date or (in the case of rights arising after the Effective Date) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier shall execute all documents and do all acts as are necessary to execute this assignment.
- 23.3 The Supplier shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Agreement or the performance of its obligations under the Agreement.
- 23.4 The Supplier shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Department a non-

exclusive licence or, if itself a licensee of those rights, shall grant to the Department an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Department to sub-license, transfer, novate or assign to other Contracting Departments, a Successor Operator or to any other third party supplying goods and/or services to the Department.

- 23.5 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Supplier shall, during and after the Term, indemnify and keep indemnified the Department and the Crown from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Department or the Crown may suffer or incur as a result of or in connection with any breach of this Clause 23.5, except to the extent that any such claim results directly from:

23.5.1 items or materials based upon designs supplied by the Department; or

23.5.2 the use of data supplied by the Department which is not required to be verified by the Supplier under any provision of the Agreement.

- 23.6 The Department shall notify the Supplier in writing of any claim or demand brought against the Department for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Supplier to the Department.

- 23.7 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Department or the Supplier) arising from the performance of the Supplier's obligations under the Contract ("**Third Party IP Claim**"), provided that the Supplier shall at all times:

23.7.1 consult the Department on all material issues which arise during the conduct of such litigation and negotiations;

23.7.2 take due and proper account of the interests of the Department; and

23.7.3 not settle or compromise any claim without the Department's approval (not to be unreasonably withheld or delayed).

- 23.8 The Department shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Supplier shall indemnify the Department for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not be required to indemnify the Department under this Clause 23.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in Clauses 23.5.1 or 23.5.2.

- 23.9 The Department shall not, without the Supplier's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

- 23.10 If any Third Party IP Claim is made or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Department and, at its own expense and subject to the Department's approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Department under Clause 23.4) use its Best Endeavours to:

23.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or

23.10.2 procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Department

and if the Supplier is unable to comply with Clauses 23.10.1 or 23.10.2 within 20 Working Days of receipt by the Department of the Supplier's notification the Department may terminate the Agreement immediately by notice to the Supplier.

23.11 Any Intellectual Property Rights that the Supplier owned or developed prior to the Effective Date shall remain vested in the Supplier but the Supplier grants to the Department a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Effective Date and which the Department reasonably requires in order to exercise its rights under, and receive the benefit of, the Agreement (including, without limitation, the Services).

23.12 The Supplier warrants to the Crown, HMSO and the Department (and to any assignees and licensees of each) that any Works will not infringe in whole or in part any Copyright or like right or any Intellectual Property Right of any other person and shall indemnify Her Majesty and/or the Government against any and all claims, demands, proceedings, expenses and losses, including any of a consequential nature, arising directly or indirectly out of any act of the foregoing in relation to any Work, where such act is or is alleged to be an infringement of a third party's Copyright or like right or other Intellectual Property Right.

23.13 The warranty and indemnity contained in Clause 23.12 shall survive the termination of this Agreement and shall exist for the life of the Copyright.

## **24 Warranty and Indemnity**

24.1 The Supplier warrants to the Department that the obligations of the Supplier under this Agreement will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Department to expect in all the circumstances. The Department relies on the Supplier's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Supplier in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Supplier as part of this Agreement. The Supplier warrants that any goods supplied by the Supplier forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.

24.2 Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Agreement the Department may:

24.2.1 require the Supplier promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or

24.2.2 assess the cost of remedying the failure (the "**Assessed Cost**") and to deduct from any sums due to the Supplier the Assessed Cost for the period that such failure continues.

24.3 The Supplier shall be liable for and shall indemnify the Department in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Department or otherwise arising out of or in the course of or caused by the provision of the Services subject to clause 25.10.

24.4 The Supplier shall be liable for and shall indemnify the Department against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Agreement or otherwise through the default of the Supplier subject to clause 25.10.

24.5 All property of the Supplier whilst on the Department's premises shall be there at the risk of the Supplier and the Department shall accept no liability for any loss or damage howsoever occurring to it.

## **25 Insurance and Liability**

25.1 The Supplier shall take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under this Agreement or any Call-Off Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of this Agreement and any Call-Off Contract and for a minimum of 6 years following the termination or expiry of this Agreement or any Call-Off Contract, if later.

25.2 The Supplier shall hold employer's liability insurance of not less than £5 million in respect of all Supplier Personnel and such insurance shall be in accordance with any legal requirement from time to time in force.

25.3 The Supplier shall give the Department, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

25.4 If the Supplier does not give effect to and maintain the insurances required by the provisions of this Agreement, the Department may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

25.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Agreement or any Call-Off Contract.

25.6 The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person. Limitations of Liability

25.7 Subject to Clauses 25.8 and 25.13 but otherwise notwithstanding any other provision of this Agreement neither Party shall be liable to the other Party for any loss of profits, business, revenue or any indirect or consequential loss.

25.8 The provisions of Clause 25.7 shall not limit the Department's right to recover, where the Supplier and/or its Subcontractors has committed a material breach for:

25.8.1 direct loss of savings or anticipated savings;

25.8.2 any losses, fines, expenses and damages imposed by, or incurred as a result of a ruling made by, a Regulatory Authority, including, but not limited to, such losses, fines, expenses and damages arising from the loss of the Department's appointment as the body responsible for discharging any functions it is responsible for from time to time under the Education Act 1997;

25.8.3 losses arising from any loss or corruption of data, including the costs of reconstituting any such lost or corrupted data;

- 25.8.4 any ex gratia payments or gifts made by the Department, costs, claims, demands, expenses and damages of whatsoever nature arising in connection with any claim (or potential claim) made against the Department by schools or pupils or their teachers or parents (including legal costs associated with the defence or settlement of such claim);
  - 25.8.5 costs and expenses associated with the Department implementing its own disaster recovery plans and the implementation of the Business Continuity Plans;
  - 25.8.6 advertising costs or other communications costs (including costs of call-outs or other communications with schools, Local Authorities or pupils, or their parents or teachers) reasonably incurred to limit damage caused to the reputation or integrity of the Department or the tests arising out of a breach of this Agreement by the Supplier; or
  - 25.8.7 any costs or expenses incurred in procuring an alternative service materially similar to the relevant Services.
- 25.9 Subject to Clause 25.13 and to the maximum extent permitted by law, the Department's aggregate liability, whether in contract, in tort (including negligence), under statute in connection with a Call-Off Contract or the receipt of the relevant Call-Off Services, shall in respect of all liabilities be limited to an amount equal to 20% of the Call-Off Value.
- 25.10 Subject to Clause 25.13 the Supplier's aggregate liability in connection with a Call-Off Contract shall be limited to an amount equal to the lower of 125% of the Call-Off Value or £5,000,000 (five million pounds).
- 25.11 **Not used**
- 25.12 In assessing whether a limit of liability set out in this Clause 25 has been met or exceeded, no account shall be taken of amounts recovered or recoverable in respect of the types of liability or losses referred to in Clause 25.13.
- 25.13 The limits on liability set out in this Clause 25 shall not apply in respect of:
- 25.13.1 any liability for death or personal injury resulting from a Party's negligence;
  - 25.13.2 any liability for fraud or fraudulent misrepresentation by a Party;
  - 25.13.3 wilful default by the Supplier; or
  - 25.13.4 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 26 Termination**
- 26.1 The Department may at any time serve a Termination Notice on the Supplier terminating the Agreement or a Call-Off Contract. If the Department serves a Termination Notice under this Clause 26.1:
- 26.1.1 the Agreement or Call-Off Contract will terminate on the date specified in the Termination Notice; and
  - 26.1.2 In the event that the Authority exercises its rights in accordance with clause 26.1, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with the Contract and which would otherwise

represent an unavoidable loss by the Contractor by reason of termination of the Contract or the relevant part if the date of termination is less than 90 days after the date of the Termination Notice.

- 26.1.3 The Authority's total liability under clause 26.1 shall be limited to the total price of the Contractor Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Contractor at the date of termination.
- 26.2 The Department may at any time serve a Termination Notice on the Supplier terminating all or part of the Agreement (including all or part of a Call-Off Contract or Service Element) if the Supplier commits:
- 26.2.1 a material Default or a series of Defaults the combination of which is material to its obligations under a Call-Off Contract and (if capable of remedy) the Supplier has failed to remedy the Default(s) within 30 days of receipt of written notice giving particulars of the Default(s) and requiring them to be remedied;
- 26.2.2 a Default or series of Defaults which results in a Regulatory Authority stating that it shall take action resulting in: (a) the loss of the Department's appointment as the body responsible for discharging any functions it is responsible for from time to time under the Education Act 1997; or (b) a significant fine; or
- 26.2.3 a Default or series of Defaults which has a material effect on the reputation of the Department or names under which the Department operates as a result of: (a) publications in national newspapers or websites of national newspapers; or (b) broadcasts on national radio or national television, that are materially factually correct as to the nature of the relevant Default(s) and such disclosure has not been made by a Government department, the Department, its employees, agents and subcontractors in breach of their obligations of confidentiality under this Agreement.
- 26.3 The Department may at any time serve a Termination Notice on the Supplier terminating all or part of the Agreement (including all or part of a Call-Off Contract or Service Element) if:
- 26.3.1 permitted by Clause 34.5;
- 26.3.2 there is a Change of Control of the Supplier and:
- 26.3.2.1 the Supplier fails to inform the Department within 10 Working Days prior to it taking place;
- 26.3.2.2 a Regulatory Authority objects to the Change of Control; or
- 26.3.3 the Supplier passes a resolution that it be wound-up or that an application be made for an administration order or the Supplier applies to enter into a voluntary arrangement with its creditors;
- 26.3.4 a receiver, liquidator, administrator, supervisor or administrative receiver is appointed in respect of the Supplier's property, assets or any part thereof;
- 26.3.5 a court orders that the Supplier is wound-up or a receiver of all or any part of the Supplier's assets be appointed;

- 26.3.6 the Supplier is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;
- 26.3.7 there is a change in the legal or beneficial ownership of 50% or more of the Supplier's share capital issued at the Effective Date unless the Supplier has previously notified the Department in writing. For the purpose of this Clause 26.3.7 "control" means the power of a person to secure that the affairs of the Supplier are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power;
- 26.3.8 the Supplier is convicted (or being a company, any officers or representatives of the Supplier are convicted) of a criminal offence related to the business or professional conduct;
- 26.3.9 the Supplier commits (or being a company, any officers or representatives of the Supplier commit) an act of grave misconduct in the course of the business;
- 26.3.10 the Supplier fails (or being a company, any officers or representatives of the Supplier fail) to fulfil its obligations relating to the payment of Social Security contributions;
- 26.3.11 the Supplier fails (or being a company, any officers or representatives of the Supplier fail) to fulfil its obligations relating to payment of taxes; or
- 26.3.12 the Supplier fails (or being a company, any officers or representatives of the Supplier fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Agreement.
- 26.4 Nothing in this Clause 26 shall affect any provision of this Agreement which is expressly or by implication intended to come into force or continue in force upon termination of this Agreement.
- 26.5 The Department shall pay the Supplier for all Call-Off Services accepted up to the date of termination and future costs committed to, provided that the Supplier shall use its Best Endeavours to mitigate such costs.
- 26.6 The Supplier may serve on the Department a Termination Notice to terminate the Agreement if the Department fails to pay an undisputed invoice and such invoice remains unpaid 60 days after receipt by the Department of a written notice requiring the Department to pay such invoice and stating the Supplier's intention to terminate the Agreement (such notice to be delivered after the due date for payment of the invoice). If the Supplier serves a Termination Notice under this Clause 26.6, the Agreement shall terminate 3 months after the notice is served.
- 26.7 Termination or expiry of this Agreement shall not cause any Call-Off Contracts to terminate automatically. All Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the terms of this Agreement.
- 26.8 Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations of the Parties accrued under the Agreement prior to its termination or expiry.
- 27 Force Majeure**
- 27.1 Neither Party shall be liable to the other for failure to comply with the Agreement to the extent caused by any Force Majeure Event subject to the Party being unable to comply with this Agreement (the "**Affected Party**");



- 27.1.1 giving written notice to the other Party (the “**Other Party**”) as soon as reasonably practicable on becoming aware of the Force Majeure Event, such notice to contain the following information:
  - 25.1.1.1 details of the Force Majeure Event that has occurred;
  - 25.1.1.2 the date from which the event has prevented or hindered the Affected Party in the performance of its duties hereunder;
  - 25.1.1.3 the duties hereunder so affected; and
  - 25.1.1.4 its best estimate of the date upon which it will be able to resume performance of the affected duties hereunder;
- 27.1.2 continuing at all times to take such steps in accordance with Good Industry Practice to resume full performance of its obligations under this Agreement;
- 27.1.3 providing at reasonable intervals updated information to the Other Party on the status of the Force Majeure Event and the steps taken to resume full performance of its obligations; and
- 27.1.4 using Best Endeavours to mitigate the consequences of the Force Majeure Event

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

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

## **28 Preparation for and Consequences of Termination**

- 28.1 If it is not commercially sensitive or in breach of Data Protection Legislation the Supplier shall give the Department on request the following up to-date information in a form that can be readily accessed by the Department or a Successor Operator and shall identify which of the following items the Supplier anticipates will transfer to the Successor Operator:
  - 28.1.1 details of all material assets used in the provision of the Services;
  - 28.1.2 details of all material agreements used in the provision of the Services;
  - 28.1.3 details of all the Departmental Data used in the provision of the Services
  - 28.1.4 details of any on-going projects or other work carried out pursuant to this Agreement
- 28.2 In connection with any expiry or termination of this Agreement or any Call-Off Contract for whatever reason:

- 28.2.1 the Supplier shall provide the Department with a formal project closure report (the **"Project Closure Report"**). The Project Closure Report shall cover all aspects of the delivery of the relevant Call-Off Service and shall include an action plan detailing how any follow on actions should be applied for the benefit of future test cycles;
- 28.2.2 the Supplier shall provide the Department and any Successor Operator with any assistance necessary for: (i) the transfer of the Services from the Supplier to the Department or any Successor Operator with the minimum of disruption and so as to prevent or mitigate any inconvenience to the Department; and (ii) the Department to understand the outcome of any Services (including the outcome of any trials or any Project Closure Report) and satisfy itself that all relevant materials have been handed to the Department or destroyed, as appropriate; and
- 28.2.3 the Supplier shall promptly give the Department (or at the Department's request destroy) all copies of the Departmental Data, the Departmental Materials and the Departmental Software in the Supplier's control or possession as set out in the Exit Management Plan.
- 28.3 Without prejudice to Clause 28.2, within 28 days of receiving a Termination Notice or confirmation from the Department that all Services in relation to a Call-Off Contract have been completed, the Supplier shall seek the Department's confirmation as to whether the Department requires the Supplier to destroy all or part of any pupil data received or processed by it in connection with the relevant Call-Off Services (the **"Specified Data"**). After the Department's confirmation or instruction that the Department requires all or part of the Specified Data to be destroyed, the Supplier shall promptly ensure that the relevant Specified Data and any copies or reproductions of that Specified Data are erased or destroyed from any memory device or medium by a secure method so that the data is unrecoverable. The Supplier shall, upon request, provide to the Department written confirmation that all the provisions of this Clause 28.3 have been fully complied with.
- 28.4 Within 6 weeks of the Service Commencement date of every Call-Off Contract awarded to the Supplier, the Supplier shall prepare an Exit Management Plan in the form set out in Schedule 7 for the approval of the Department.

## **29 Confidentiality**

- 29.1 Subject to Clause 29.7, the Supplier shall, and shall procure that its Group Companies, shall, treat as strictly confidential and not disclose or use any information received or obtained in connection with this Agreement or any Call-Off Contract which relates to the negotiation or provisions of this Agreement and any agreement entered into pursuant to this Agreement, or the Services (or any information supplied as part of the provision or receipt of the Services).
- 29.2 The Supplier shall ensure that its Personnel, professional advisors and consultants are aware of the Supplier's confidentiality obligations under this Agreement.
- 29.3 The provisions of Clause 29.1 shall not prohibit disclosure or use of information if and to the extent:
  - 29.3.1 that use or disclosure is required for the provision of the Services;
  - 29.3.2 required by Regulation or any competent Regulatory Authority or for the purpose of any judicial proceedings arising in connection with this Agreement (including any disclosure permitted by FOIA);

- 29.3.3 made to or used by the Supplier's professional advisers, provided that such professional advisers undertake to comply with the provisions of Clause 29.7 in respect of such information as if they were a party to this Agreement;
- 29.3.4 it becomes publicly available (other than as a result of a breach of an obligation of confidentiality);
- 29.3.5 the Department has given prior written consent to the disclosure or use; or
- 29.3.6 the information is already in the possession of the Supplier and is not subject to an obligation of confidentiality or a restriction on use

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

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

- 29.4.1 to any Crown Body or any other Contracting Department. All Crown Bodies or Contracting Department's receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Department;
- 29.4.2 to any consultant, contractor or other person engaged by the Department;
- 29.4.3 for the purpose of the examination and certification of the Department's accounts; or
- 29.4.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Department has used its resources;
- 29.4.5 that has been provided in the Exit Management Plan for the purposes of procurement of any replacement Framework and for the smooth transition to any Successor Operator; such disclosure shall be made subject to a Non-Disclosure Agreement between the Department and the third parties to whom the Exit Management Plan is disclosed.

- 29.5 The Department shall use reasonable endeavours to ensure that any Government department, Contracting Department, employee, third party or Subcontractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 29 is made aware of the Department's obligations of confidentiality.

- 29.6 Nothing in this Clause 29 shall prevent either Party from using any techniques, ideas or Know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of its Intellectual Property Rights.

- 29.7 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Department shall determine in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 29.8 Subject to Clause 29.7, the Supplier hereby consents to the Department publishing the Agreement in its entirety, including from time to time agreed changes to the Agreement, to the general public.
- 29.9 The Department may consult the Supplier to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.

### **30 Freedom of Information**

- 30.1 The Supplier acknowledges that the Department is subject to the FOIA and the EIR.
- 30.2 The Supplier shall and shall procure that its Subcontractors shall:
- 30.2.1 transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 30.2.2 give the Department a copy of all Information in its possession or control in the form that the Department requires within 5 Working Days (or such other period as the Department may specify) of the Department's request;
  - 30.2.3 provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to comply with its obligations under the FOIA and EIR; and
  - 30.2.4 not respond directly to a Request for Information unless expressly authorised to do so by the Department.
- 30.3 The Department shall determine in its absolute discretion and notwithstanding any other provision in the Agreement or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.

### **31 Data Protection Legislation**

- 31.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is detailed in individual Call-offs by the Customer and may not be determined by the Contractor.
- 31.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 31.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- 31.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 31.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 31.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

- 31.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 31.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement.
  - 31.4.1 Process that Personal Data only in accordance with individual Call-offs, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - 31.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
    - 31.4.2.1 nature of the data to be protected;
    - 31.4.2.2 harm that might result from a Data Loss Event
    - 31.4.2.3 state of technological development; and
    - 31.4.2.4 cost of implementing any measures;
  - 31.4.3 ensure that :
    - 31.4.3.1 the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in individual Call-offs);
    - 31.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and that they:
    - 31.4.3.3 are aware of and comply with the Contractor's duties under this clause;
    - 31.4.3.4 are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
    - 31.4.3.5 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
    - 31.4.3.6 have undergone adequate training in the use, care, protection and handling of Personal Data; and
    - 31.4.3.7 not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - 31.4.3.8 the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
    - 31.4.3.9 the Data Subject has enforceable rights and effective legal remedies;
    - 31.4.3.10 the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

- 31.4.3.11 the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
    - 31.4.3.12 at the written direction of the Customer; delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 31.5 Subject to Clause 31.4, the Contractor shall notify the Customer immediately if it:
  - 31.5.1 Receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 31.5.2 Receives a request to rectify, block or erase any Personal Data;
  - 31.5.3 Receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 31.5.4 Receives any communication from the Information Commissioner or any other regulatory authority in connection Personal Data processed under this Agreement;
  - 31.5.5 Receives a request from any Third Party for disclosure or Personal Data where compliance with such request is required or purported to be required by Law; or
  - 31.5.6 Becomes aware of a Data Loss Event.
- 31.6 The Contractor's obligation to notify under Clause 31.5 shall include the provision of further information to the Customer in phases, as details become available.
- 31.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 31.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
  - 31.7.1 the Customer with full details and copies of the complaint, communication or request;
  - 31.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant Timescales set out in the Data Protection Legislation;
  - 31.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 31.7.4 assistance as requested by the Customer following any Data Loss Event;
  - 31.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office.
- 31.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- 31.8.1.1 The Customer determines that the processing is not occasional;
  - 31.8.1.2 The Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 31.8.1.3 The Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 31.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 31.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 31.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
  - 31.11.1 Notify the Customer in writing of the intended Sub-processor and processing;
  - 31.11.2 Obtain the written consent of the Customer;
  - 31.11.3 Enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
  - 31.11.4 Provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 31.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 31.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 31.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **32 Audit and Documents**

- 32.1 The Supplier must keep such documents as are reasonably necessary to enable the Department to comply with its obligations under the Regulations and other documents in accordance with Good Industry Practice which are sufficient to enable the Department to have a complete and accurate understanding of the Supplier's performance of its obligations under this Agreement (the "**Documents**"). The Supplier must retain the Documents and the means to access and view the Documents, for the minimum period required by law, or 7 years, whichever is the greater.
- 32.2 The Supplier shall permit, and shall ensure that its Subcontractors permit, an auditor (which may be the Department or its designated representative (the "**Auditor**") to audit it and/or its Subcontractors:
  - 32.2.1 up to twice in any calendar year to carry out a financial, quality and/or value for money audit but not more than once in any 6 month period; and

- 32.2.2 at any time if the Department has reasonable concerns about the provision of the Services.
- 32.3 The Department shall (except where the purpose of the audit would be frustrated by doing so or where a Regulatory Authority or Regulations prohibit the Department from doing so) use reasonable endeavours to: give the Supplier 20 Working Days' notice of when the audit shall be conducted, except that the Department shall not be required to give the Supplier any prior notice of any audit which has as its main purpose the verification of the Supplier's compliance with its obligations under Clauses 38 or 26 or if the Department reasonably believes that the Supplier is in material breach of the Agreement.
- 32.4 The Supplier shall ensure that it and its Subcontractors provide all reasonable assistance to, and co-operate with, the Auditor, including providing access to the Documents and any other relevant information.
- 32.5 Each Party shall bear its own costs of any of the audits set out in Clause 32.2, except if the Auditor finds that the Supplier has acted in material breach of this Agreement or where the Supplier has failed to comply with its obligations under Clause 32.4, in which case the Supplier shall bear all costs of the audit.
- 32.6 If, as the result of any audit, it is found that the Supplier has overcharged the Department, the Supplier shall immediately pay to the Department a sum equal to the amount overcharged by electronic bank transfer and interest accrued on such overcharged amounts at a rate equal to the interest rate of 1% over the Bank of England base rate from time to time.
- 32.7 The Supplier shall attend any meetings requested by a Regulatory Authority. The Supplier shall, and shall procure that its Subcontractors shall: (i) permit any Regulatory Authority or its designated representatives access to their facilities to audit their provision of the Services and provide such information and assistance as the Regulatory Authority may require; and (ii) provide the Department with a copy of the results of any report relating to any inspection visit by the Regulatory Authority.
- 32.8 If the Department wishes to conduct audits additional to those set out in this Clause 32, the Department may do so and the Supplier shall be entitled to make a reasonable additional charge in respect of any costs incurred in complying or assisting with such audit.
- 33 Tax Indemnity**
- 33.1 Where the Supplier is liable to be taxed in the UK in respect of consideration received under this Agreement, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- 33.2 Where the Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under this Agreement, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 33.3 The Department may, at any time during the term of this Agreement, ask the Supplier to provide information which demonstrates how the Supplier complies with Clauses 33.1 and 33.2 or why those Clauses do not apply to it.
- 33.4 A request under Clause 33.3 above may specify the information which the Supplier must provide and the period within which that information must be provided.
- 33.5 The Department may terminate this Agreement if-
- 33.5.1 in the case of a request mentioned in Clause 33.3 if the Supplier:



- 33.5.1.1 fails to provide information in response to the request within a reasonable time, or
    - 33.5.1.2 provides information which is inadequate to demonstrate either how the Supplier complies with Clauses 33.1 and 33.2 or why those Clauses do not apply to it;
  - 33.5.2 in the case of a request mentioned in Clause 33.4, the Supplier fails to provide the specified information within the specified period, or
  - 33.5.3 it receives information which demonstrates that, at any time when Clauses 33.1 and 33.2 apply, the Supplier is not complying with those Clauses.
- 33.6 The Department may supply any information which it receives under Clause 33.3 to HMRC for the purpose of the collection and management of revenue for which they are responsible.
- 33.7 The Supplier warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and NICs which may be found due from it in relation to any payments or arrangements made under this Agreement or in relation to any payments made by the Supplier to its officers or employees in connection with this Agreement.
- 33.8 The Supplier will account to the appropriate authorities for any income tax, NICs, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Supplier under this Agreement or in relation to any payments made by the Supplier to its officers or employees in connection with this Agreement.
- 33.9 The Supplier shall indemnify Department against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the parties of their obligations under this Agreement (other than in respect of employer's secondary NICs) and any costs, expenses, penalty fine or interest incurred or payable by Department in connection with any such assessment or claim.
- 33.10 The Supplier authorises the Department to provide the HMRC and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Agreement whether or not Department is obliged as a matter of law to comply with such request.
- 34 Mobilisation and Implementation**
  - 34.1 Within 10 Working Days of any Service Commencement Date, the Supplier shall meet the Contract Manager to demonstrate the readiness and appropriateness of plans, processes, systems, resourcing and any other factors required to enable the reliable completion of the relevant Call-Off Service ('Start-up meeting').
  - 34.2 At the 'Start-up meeting' the Supplier shall, for each Call-Off Contract, deliver to the Contract Manager:
    - 34.2.1 a project plan, which, as a minimum will include a timetable of the main activities required to meet the key milestones as set out in any Call-Off order form arising from this framework.
  - 34.3 The Supplier shall not propose any amendments to the Milestone Dates for any Key Milestones unless there is good cause in order to protect the quality or any other aspect of the Services or to rectify a delay caused directly or indirectly by the Department. In any event, the Department shall be entitled to reject any amendments to the Milestone Dates proposed by the Supplier (whether as part of the Project Plan or otherwise) in its

sole discretion, in which case the Milestone Dates set out in the relevant Call-Off Contract shall apply.

- 34.4 The Department shall, within 5 Working Days of receiving all of the documentation referred to in Clause 34.2 above, notify the Supplier of the results of the Department's review of the same. Following the Department notifying the Supplier of the results of the Department's review, the Supplier shall within 2 Working Days amend the PID, the Project Plan and the Process Document in accordance with any reasonable recommendations made by the Department and shall resubmit the PID, the Project Plan and the Process Document to the Department for the Department's approval. The Supplier shall continue to amend and resubmit and the Department shall continue to review the PID, the Project Plan and the Process Document in accordance with this Clause 34.3 until the Department has approved such documents.
- 34.5 If the Project Plan and the Process Document have not been approved in accordance with Clause 34.3 within 4 weeks of the Service Commencement Date, then the Department shall be entitled to serve a Termination Notice to effect immediate termination of the relevant Call-Off Contract.
- 34.6 The Supplier shall keep the Project Plan and the Process Document up-to-date throughout the Call-Off Contract term and shall provide updates in connection with their contents to the Department on a weekly basis during the Call-Off Contract term or as otherwise reasonably required by the Department. The Supplier shall not be entitled to change Milestone Dates, Service standards or descriptions or any other matters that may affect the Department's rights and remedies (or the Supplier's obligations) through its updates of the documents referred to in this Clause 34.
- 34.7 The Supplier shall ensure at all times the Supplier System has adequate capability, capacity and availability for all the processing and other functions necessary for performance of the Services in accordance with the Agreement, including compliance with the Regulations. The Supplier shall maintain, at its own cost, all required authorisations and licences in respect of the Supplier System.
- 34.8 The Supplier shall ensure that all of the Milestones are completed by their Milestone Dates. If at any time the Supplier is aware that any of the Milestones will not or are unlikely to be completed by their Milestone Dates, it shall:
- 34.8.1 inform the Department of the reasons for not meeting that Milestone Date;
  - 34.8.2 inform the Department of the consequences of not meeting the Milestone Date (including any impact on the likelihood of other Milestones being completed by their Milestone Dates);
  - 34.8.3 inform the Department of the steps it will take to mitigate against the consequences of not meeting the Milestone Date; and
  - 34.8.4 provide all additional resources necessary to ensure that the Milestone is completed as soon as reasonably practical.
- 34.9 The Supplier shall report progress towards the Milestones against the Milestone Dates in order to identify as soon as reasonably practicable whether a Milestone is unlikely to be completed by the relevant Milestone Date.
- 34.10 During the Exit Phase, the Supplier shall perform its obligations set out in the Exit Management Plan in accordance with Clause 28.

### **35 Acceptance Testing**

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

### **36 Failures**

- 36.1 The Supplier shall promptly warn the Department if it has reasonable grounds to believe that any development (including failure on the part of the Supplier to carry out its obligations and responsibilities under this Agreement) will have, or threatens to have, a detrimental effect on all or part of the Services. At the Department's request, the Supplier shall take all reasonable steps to prevent such development from occurring and to prevent its reoccurrence.
- 36.2 If the Supplier fails to perform the Services in accordance with this Agreement to the extent that the failure is directly caused by the Supplier and/or its Subcontractors (a "**Defect**") then, without prejudice to any other rights or remedies it may have under this Agreement or otherwise, the Department may require the Supplier by notice in writing, at the Supplier's own expense, to remedy any Defect or to re-perform any Service affected by the Defect within a reasonable time specified in the notice. If the Supplier fails to remedy a Defect within the time specified, the Department may, or may instruct a third party to, remedy that Defect, the reasonable costs of which shall be borne by the Supplier.
- 36.3 If the Supplier fails to perform the Services in accordance with this Agreement, then without prejudice to any other rights or remedies it may have under this Agreement or otherwise, the Department may require the Supplier by notice in writing to carry out an investigation into the cause of such failure. The Supplier shall carry out such an investigation in accordance with Good Industry Practice, promptly and at its own cost and shall provide a complete and accurate report of that investigation to the Department.
- 36.4 The obligations in this Clause 36 are without prejudice to any other obligations of the Supplier or rights of the Department whether under this Agreement or otherwise.

### **37 Charges**

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

- 37.2 The Supplier shall invoice the Department for Charges in accordance with Schedule 2, on receipt of written Acceptance from the Department that the Acceptance Criteria set out in any Call-Off Contract have been met in full.
- 37.3 All Charges properly invoiced by the Supplier in accordance with this Agreement shall be paid by the Department within 30 days of receipt except for any amount in respect of which the Department wishes to raise a genuine dispute.
- 37.4 All costs and expenses must be invoiced by the Supplier as part of the Charges within 6 months of the date the Supplier is first entitled to invoice such sums against the payment milestones specified in the Call-Off Contract. The Supplier irrevocably waives the right to payment of any sums not invoiced within this period.

## **38 Security**

- 38.1 The Parties shall comply with the provisions of Schedule 10 in addition to this Clause 38.
- 38.2 Within 10 Working Days after the Effective Date, the Supplier shall deliver to the Department for the Department's review a security plan that is compliant with the principles of the SPF (the "**Security Plan**"). The Supplier shall ensure that the Security Plan incorporates proposed security mechanisms for all data transfers, as well as detailed security policies, standards and controls and covers all aspects of the Services (including physical security, infrastructure, platforms, transportation of sensitive material, applications and services and interfaces). Following the Department notifying the Supplier of the results of this review, the Supplier shall within 5 Working Days amend the Security Policy and accordance with any recommendations made by the Department and shall resubmit the Security Plan to the Department for the Department's approval. The Supplier shall continue to amend and resubmit the Security Plan in accordance with this Clause until the Department has approved such plan. The Supplier shall ensure that the delivery of any Call-Off Services does not commence until the Department has approved the Security Plan in accordance with this Clause. The Supplier shall comply with the Security Plan approved by the Department at all times during any Call-Off Contract term.
- 38.3 The Supplier shall work with the Department to identify any materials or information assets that the Supplier and/or any Subcontractors may have access to and that may be classified as BIL1, BIL2 or BIL3 (as such terms are defined in the SPF). The Department shall determine the relevant BIL classification for any materials and information assets in its sole discretion and the Supplier shall treat and secure such information accordingly (including in accordance with the SPF).
- 38.4 The Supplier shall ensure that the following precautions are in place when transporting sensitive materials (including between the Supplier's premises, and to administrators and Markers):
- 38.4.1 the use of tamper-proof and clearly-labelled packaging;
  - 38.4.2 the use of only transport suppliers and/or couriers which (as a minimum) provide appropriate levels of security protection, track and trace and GPS tracking;
  - 38.4.3 the requirement for an approval from the Security Manager, or appropriate delegated representative, prior to any release of material for transport, and ensuring the Department's relevant Relationship Manager is informed of the transport's time of departure, proposed route and time of arrival at destination;
  - 38.4.4 for bulk movement of materials, the use of rigid-sided vehicles;

- 38.4.5 not leaving vehicles unattended at any time and informing the Department's relevant Relationship Manager of any unexpected delay;
  - 38.4.6 ensuring deliveries are completed during a driver's allocated hours where possible and that the relevant vehicle is securely parked;
  - 38.4.7 when using a courier network for packages, ensuring a track and trace system is used for each package or consignment;
  - 38.4.8 ensuring a scan tracks the package or consignment at each transfer point in the network through to final proof of delivery; and
  - 38.4.9 notifying the Department within 3 business hours of becoming aware of any actual or suspected security issue or loss or breach of the terms of this Clause 38.
- 38.5 At least 5 Working Days prior to the relevant Service Commencement Date, the Supplier shall confirm in writing to the Department that all Personnel who have access to the Services, or secure materials or data related to the Services are vetted to a level necessary and appropriate for the BIL of the material. The Supplier shall ensure that any Personnel with access to pupil level data (excluding Markers that have been confirmed as holding qualified teacher status) have had a Criminal Records Bureau check performed on them within the last 3 years and that such check has not flagged potential concerns around that Personnel's suitability to access pupil level data.
- 38.6 Without prejudice to any other rights and remedies of the Department, any breach of this Clause 38 by the Supplier that results in either a significant adverse effect on the reputation of the Department or on the reputation or integrity of the tests shall be a material breach of this Agreement.
- 39 Disaster Recovery and Business Continuity**
- 39.1 The Supplier shall have in place a business continuity management system that is compliant with HMG standards <https://www.gov.uk/government/collections/government-security> and the SPF that has been approved by the Department within 4 months of the Effective Date.
- 39.2 The Supplier undertakes that it has and shall continue to have in place up-to-date disaster recovery plans and business continuity plans ("**Business Continuity Plans**"):
- 39.2.1 in accordance with the minimum standards prescribed from time to time by any Regulatory Authority;
  - 39.2.2 that are aligned with the Department's disaster recovery and business continuity plans to the extent that such plans have been notified to the Supplier and to the extent that they relate to the Services, events that could affect the Services or failures in the Services; and
  - 39.2.3 without limiting the generality of the foregoing, in accordance with Good Industry Practice.
- 39.3 Within 4 months of the Effective Date, the Supplier shall provide the Department with a copy of the Business Continuity Plans for its review. Following the Department notifying the Supplier of the results of this review, the Supplier shall within 5 Working Days amend the Business Continuity Plans in accordance with any recommendations made by the Department and shall resubmit the Business Continuity Plans to the Department for the Department's approval. The Supplier shall continue to amend and resubmit the Business

- Continuity Plans in accordance with this Clause 39.3 until the Department has approved such plans.
- 39.4 The Supplier shall test the Business Continuity Plans to ensure their effectiveness:
- 39.4.1 at least once per year following the Effective Date; or
- 39.4.2 when the Department requests such a test on not less than 5 Working Days' notice in writing.
- 39.5 the Department shall be invited to participate in and attend such tests and shall be given all information and cooperation as may be reasonably requested in order to enable it to monitor such tests, including access to premises, locations and systems from which the Services are provided (or from which the Services will be provided in the event of a disaster), the results of any such testing and details of the steps taken to remedy any shortcomings or failings in the Business Continuity Plans identified as part of such testing. The Supplier shall provide the results of any test undertaken in accordance with this Clause **Error! Reference source not found.** to the Department within 5 Working Days of such test having been completed.
- 39.6 The Supplier shall provide a copy of the then current Business Continuity Plans to the Department on request from time to time.
- 39.7 If a disaster or any event envisaged in the Business Continuity Plan occur, the Supplier shall promptly notify the Department and implement the Business Continuity Plan as expeditiously as possible in the circumstances. In doing so, the Supplier shall not treat the Department any less favourably than any other customer of the Supplier.
- 39.8 Without prejudice to the Supplier's obligations under Clauses 30 and 31, the Supplier shall ensure that at least 2 back-up copies of the Departmental Data are made daily and held securely. The Supplier shall also ensure that at least one of the 2 copies of the Departmental Data is kept in a separate secure offsite physical location to the primary copy of the Departmental Data.
- 39.9 The Supplier shall ensure that an appropriate media rotation procedure is followed, in line with ISO/IEC 27001 and Government security policies.
- 39.10 The Supplier shall restore or recreate any the Departmental Data that has been lost, corrupted or destroyed as a result of any Default by the Supplier. Such restoration or recreation shall be carried out promptly and at the Supplier's own cost. This right of the Department is in addition, and shall be without prejudice, to any other right or remedy of the Department under this Agreement or otherwise.
- 40 Governance, Service Management and Reports**
- 40.1 During the Term, the Supplier shall meet with the Department, upon the Department's reasonable request, to discuss the Supplier's capability to perform any of the Services (irrespective of whether or not the Supplier and the Department have executed any Call-Off Contracts) and the Parties shall discuss any strategic issues at such meetings which the Department may raise at or in advance of the meetings.
- 40.2 During any Call-Off Contract term, the Supplier shall report on a weekly basis to the Department (including, at the Department's option by attending meetings with the Department) on its progress in completing the Service Elements, including: completion of, or failure to complete, any Milestones; an overview of the work completed to date and the work currently being performed; estimated time to complete the Milestones; and details of any significant risks or challenges faced by the Supplier, together with details of the measures taken to mitigate or remedy those risks or challenges.

- 40.3 24 hours in advance of any meetings held pursuant to Clause 40.2, the Supplier shall provide to the Department the Supplier's report on its progress in completing the Service Elements, as set out in Clause 40.2.
- 40.4 The Supplier shall take steps in accordance with Good Industry Practice to ensure that all transactions, data access and processing carried out in connection with the Services can be securely traced to an individual or organisation through a secure audit trail.
- 40.5 Within 5 Working Days of the start of each month during a Call-Off Contract term, the Supplier shall provide the Department with information about the current status of the Services, performance against the Project Plans and the Management Information for the previous month. The Supplier shall ensure that the content of the Management Information provided is adequate for the purpose for which the relevant Management Information is required, up-to-date and accurate. The Supplier shall also provide the Department with any additional information reasonably requested by the Department in order to assess the performance or progress of the Services from time to time.
- 40.6 In respect of each Call-Off Contract, the Supplier shall maintain and keep up-to-date throughout any Call-Off Contract term in accordance with PRINCE2 principles a risk log (the "**Risk Log**"), which includes details of the risks, which may affect the Call-Off Service and any significant changes in process. The Supplier shall provide such Risk Log to the Department each week.
- 40.7 The principal point of contact between the Parties in relation to issues arising out of this Agreement, any Call-Off Contract or the performance of the Services will be the relevant Relationship Managers. Either Party may change the identity of its Relationship Managers at any time by written notice to the other.
- 40.8 The Supplier shall from time to time:
- 40.8.1 provide oral or written reports to the Department and liaise with the Department on the progress and management of the Services as and when reasonably required by the Department;
  - 40.8.2 provide to the Department any information, reports or assistance requested by Ofqual in the exercise of its powers under the Regulations, in an open and co-operative manner and in accordance with any timing and format requirements set by Ofqual; and
  - 40.8.3 attend and report to meetings with the Department and its nominees (which may include Ofqual) to discuss any aspect of the Services as and when reasonably required by the Department.

## **41 Complaints**

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

- 41.3 Within two (2) Working Days of a request by the Department, the Supplier shall provide full details of a Complaint to the Department, including details of steps taken to its resolution.

## **42 Regulations**

- 42.1 Save where the Department determines that a Regulatory Change is not required in accordance with Clause 42.7 (and then only to the extent of that Regulatory Change), the Supplier shall comply, and shall ensure that its Subcontractors and Personnel comply, with all Regulations and Government standards (including the e-government interoperability framework) at all times when performing the Services, insofar as such Regulations and Government standards apply to the Services.
- 42.2 The Supplier shall ensure that the Services are performed so that the Department complies with all Regulations, to the extent the Department's compliance with the Regulations is dependent on the Services.
- 42.3 Each of the Parties shall advise the other immediately if it becomes aware of any non-compliance or suspected non-compliance by the Supplier with the provisions of Clauses 42.1 or 42.2 in connection with the performance of the Services. If such an event occurs, the Supplier shall promptly make available to the Department any information that the Department reasonably requires for the purposes of any further investigation of such non-compliance or suspected non-compliance.
- 42.4 If the Supplier receives any correspondence from any Regulatory Authority (save in respect of: (i) corporation tax; or (ii) NICs) that relates to the Services, it shall promptly provide a copy of that correspondence to the Department unless it is prevented from doing so by the Regulations or a Regulatory Authority. The Supplier shall give the Department a reasonable opportunity to discuss and make representations on the practical and written response to such correspondence, and shall only respond to the Regulatory Authority if:
- 42.4.1 the terms of the response have been approved by the Department (such approval not to be unreasonably withheld or delayed); or
  - 42.4.2 the Supplier is required by Regulations to respond to the Regulatory Authority without the Department's consent.
- 42.5 If a change to any Regulation means a change to the Services or Charges is required (a "**Regulatory Change**"), the Supplier shall, subject to Clauses 42.6 and 42.7, make that Regulatory Change as soon as reasonably possible.
- 42.6 The Parties shall agree the details and cost of the Regulatory Change in accordance with the Change Control Procedure.
- 42.7 If there is any disagreement between the Parties regarding any Regulatory Change or potential Regulatory Change the Department shall:
- 42.7.1 have the right to determine: (a) whether a Regulatory Change is required; and (b) how the Supplier shall implement that Regulatory Change, in which case the Supplier shall promptly implement the Regulatory Change as determined by the Department in accordance with this Clause 42.7.1; and
  - 42.7.2 pay the Supplier the costs of implementing the Regulatory Change which shall be equivalent to the Supplier's reasonable costs, calculated on a Time and Materials Basis, save that if the Regulatory Change is carried out for other service recipients of the Supplier, the Department shall only bear an equitable proportion of the Supplier's reasonable costs.



**43 Discrimination**

- 43.1 The Supplier shall have a written equal opportunities and diversity policy or shall sign a statement confirming adoption of the Department's equal opportunities policy for the duration of the Term. The Supplier shall make a statement of such policy or confirmation of such adoption available to the Department upon request.
- 43.2 The Supplier's equal opportunities and diversity policy shall relate to all forms of unlawful discrimination which is prohibited under Article 14 of the European Convention on Human Rights and the Equality Act 2010 (the "**EA**").
- 43.3 The Supplier shall ensure that, in carrying out its obligations under this Agreement, neither it nor any of its Subcontractors commits or incites another to commit an act of discrimination rendered unlawful, or any act of discrimination which if committed by the Department would be rendered unlawful, by the EA, the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 or the Human Rights Act 1998.
- 43.4 The Supplier shall ensure that it and its Subcontractors perform their obligations under this Agreement in a manner which enables the Department to comply and to demonstrate compliance with the equality duties imposed on the Department by and under the EA. In particular but without prejudice to the generality of the foregoing, the Supplier shall, subject to Clause 43.5:
- 43.4.1 comply with all reasonable policies developed by the Department with regard to compliance with the duties imposed on the Department by and under the EA (the "**EA Policies**") as are relevant to the provision of the Services and as are amended and notified to the Supplier by the Department from time to time;
  - 43.4.2 comply with all reasonable directions from the Department with regard to the provision of the Services in accordance with the EA;
  - 43.4.3 collect and supply to the Department such data and other information as the Department may reasonably request with a view to ensuring and demonstrating compliance with the EA; and
  - 43.4.4 provide all reasonable assistance to, and consultation and liaison with, the Department with regard to any assessment of the impact on and relevance to the provision of the Services of the duties imposed by the EA and the development or modification of the EA Policies relevant to the provision of the Services.
- 43.5 If:
- 43.5.1 any requirement imposed on the Supplier under this Clause 43 to comply with the EA or other legislation referred to in this Clause 43 constitutes an addition or alteration to the policies and requirements specified in this Agreement; and
  - 43.5.2 the Department is satisfied that, in complying with that requirement, the Supplier will incur expenditure significantly additional to that which would otherwise be incurred by the Supplier in complying with the EA in general

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

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

**44 Prevention of Fraud and Corruption**

- 44.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Personnel, have at any time prior to the Effective Date:

44.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

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

- 44.2 The Supplier shall not during the Term:

44.2.1 commit a Prohibited Act; and/or

44.2.2 do or suffer anything to be done which would cause the Department or any of its Personnel, consultants, contractors, Subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

- 44.3 The Supplier shall, during the Term:

44.3.1 establish, maintain and enforce, and require that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

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

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

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

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

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

- 44.5 If the Supplier notifies the Department pursuant to Clause 44.1, the Supplier shall respond promptly to the Department's enquiries, co-operate with any investigation, and allow the Department to audit any books, records and/or any other relevant documents.
- 44.6 If the Supplier defaults under Clauses 44.1 and/or 44.2, the Department may by notice:
- 44.6.1 require the Supplier to remove from performance of the Services any Personnel whose acts or omissions have caused the default; or
- 44.6.2 immediately terminate the Agreement.
- 44.7 Any notice served by the Department under Clause 44.6 shall specify the nature of the Prohibited Act, the identity of the party who the Department believes has committed the Prohibited Act and the action that the Department has taken (including, where relevant, the date on which the Agreement shall terminate).

#### **45 General Communications**

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

#### **46 Waiver**

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

#### **47 Notices**

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

#### **48 Dispute Resolution**

- 48.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Agreement.
- 48.2 Any dispute not capable of resolution by the Parties in accordance with the terms of Clause 48.1 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution Model Mediation Procedure.
- 48.3 Neither Party may commence any court proceedings/arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle it by mediation, but any such mediation may be terminated by either Party at any time if such Party wishes to commence court proceedings or arbitration.

#### **49 Law and Jurisdiction**

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

**50 TUPE**

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

- 50.1.1 The total number of Staff whose employment/engagement shall terminate at the end of the Term;
- 50.1.2 The age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 7.1.1;
- 50.1.3 The terms and conditions of employment/engagement of the Staff referred to in clause 7.1.1, their job titles and qualifications;
- 50.1.4 Details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
- 50.1.5 Details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

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

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

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





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





50.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the DFE, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:

- 50.5.1 the provision of TUPE Information;
- 50.5.2 any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;
- 50.5.3 any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the DFE or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;

- 50.5.4 any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
  - 50.5.5 any claim by any person who is transferred by the Contractor to the DFE and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- 50.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the DFE and provide the DFE with up to date TUPE Information.
- 50.7 This clause 7 applies during the Term and indefinitely thereafter.
- 50.8 The Contractor undertakes to the DFE that, during the 12 Months prior to the end of the Term the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):
  - 50.8.1 amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
  - 50.8.2 terminate or give notice to terminate the employment or engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
  - 50.8.3 transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
  - 50.8.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

As witness the hands of the parties

<b>Authorised to sign for and on behalf of VI Resourcing:</b>	
Signature:	
Name in CAPITALS:	
Position in Organisation:	
Address in full:	
Date:	Feb 2, 2023

<b>Authorised to sign for and on behalf of the Secretary of State for Education:</b>	
Signature:	
Name in CAPITALS:	
Position in Organisation:	
Address in full:	
Date:	Feb 6, 2023

## **Schedule 1 – Services**

### **Summary of requirements**

STA is looking to appoint a maximum of four Suppliers onto a framework to act as Modified Test Agency (MTA) for national curriculum tests.

As a MTA, the Supplier will be required to provide modified versions of standard tests in various formats. At present, the following versions are produced by the Modified Test Agency: braille; modified large print (MLP); and stimulus material to support pupils with hearing impairment and pupils who use sign language. Over the period of the Framework, these requirements may change to ensure the STA is providing the most appropriate materials to support pupils to access the tests.

The Supplier will be required to provide amendments to the standard marking guidance to enable consistent marking of the modified versions of the tests.

Depending on the Call off requirements the Supplier may be required to provide a specialist helpline service for schools and other users of modified tests.

When a Helpline is a requirement of the Call off, the Supplier will be responsible for receiving, and logging on STA's test orders website, details of any orders for modified test materials that have not been directly entered on the website by schools, and providing order updates directly to STA's website to an agreed schedule.

The Supplier shall provide an on-demand past paper service to schools that contact the Helpline requesting practice materials.

STA is interested in investigating the possibility of developing digital assessments and may request feedback on digital materials. For future call offs STA will clearly indicate when feedback is a requirement in any future call offs.

### **Detailed Requirements - Key stage 1 & 2 national curriculum tests**

#### **Part A: General core services**

This section covers general requirements that must be delivered for each call off from the Framework. Bidders must demonstrate their ability to manage projects and programmes using established methodologies.

**PM - Project Management**

No	Requirement
<b>PM.1</b>	The Supplier must manage all aspects of delivery of the Services in accordance with PRINCE2 and Management of Risk (MoR) project and risk management methodologies, or equivalent.
<b>PM.2</b>	<p>The Supplier must submit a Project Initiation Document (PID) which clearly sets out the project for the delivery of services at the outset of each call-off.</p> <p>The PID must cover all aspects of the delivery of the Project, including operational delivery, governance and interfaces with other organisations. The PID should include, but not be limited to:</p> <ul style="list-style-type: none"> <li>• risk management process / risk register</li> <li>• an issue log</li> <li>• a change control register</li> <li>• communication plan</li> <li>• quality plan and log</li> <li>• product descriptions (as appropriate)</li> <li>• exception reports</li> <li>• lessons learned log</li> <li>• equality plan and social value management</li> </ul>
<b>PM.3</b>	The Supplier must provide a detailed project plan detailing the resources, tasks and timescales required to be performed to mobilise and deliver the Services within the Agreement together with a summary milestone plan, which details the deliverables outlined in the PID, and requirements / dependencies upon STA. Both plans are to be kept up-to-date and communicated weekly or as required to STA.
<b>PM.4</b>	The Supplier must document, provide and maintain all processes and procedures utilised in the delivery of the services, including interfaces with other relevant parties ensuring that all relevant standards are applied or adhered to including project management methodologies.
<b>PM.5</b>	Prior to the commencement of a work package, the Supplier must discuss and demonstrate the readiness and appropriateness of plans, processes, systems, resourcing and any other factors required to enable the reliable completion of the work package.




No	Requirement
<b>PM.6</b>	The Supplier must formally close the call-off order by providing a Project Closure report. This report shall cover all aspects of the delivery of the Project. The Supplier must provide an action plan detailing how any follow on actions should be applied for the benefit of future Test Cycles.
<b>PM.7</b>	The Supplier must hold, and permit STA open access to, detail relating to all activities undertaken in delivering the services.
<b>PM.8</b>	2.5.2 The supplier must comply with any reasonable requests for information from STA.
<b>PM.9</b>	The Supplier must attend any meetings as reasonably requested by STA at locations determined by STA.

## MI - Management Information

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

No	Requirement
<b>MI.1</b>	<p>The Supplier is required to submit to STA Management Information (MI) and performance reports based on, but not limited to, the following where applicable for each call off:</p> <ul style="list-style-type: none"> <li>• Calls received</li> <li>• Emails received</li> <li>• Receipt and validation of test orders</li> <li>• Past papers requested</li> <li>• General enquiries</li> <li>• Equalities plan and social values</li> <li>• Checkpoint reports</li> <li>• Security reports</li> </ul>

	<p>The frequency, format and content are to be agreed with STA at the Start-up meeting.</p> <p>STA reserves the right to add to the Management Information requirements during the life of the framework. Any further requirements will be specified in individual Call-Offs.</p> <p> MI_Example.xlsx</p>
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## S - Security

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

No	Requirement
<b>S.1</b>	<p>The Supplier must ensure that a security manager is appointed who shall have ultimate responsibility for all aspects of information governance and security management relating to the Supplier Services.</p> <p>The Supplier must produce and adhere to a security plan, based on and compliant with the principles, and outcomes required of government Departments, in HMG Security Policy Framework (SPF) (see <a href="https://www.gov.uk/government/collections/government-security/">https://www.gov.uk/government/collections/government-security/</a> ). The plan shall incorporate detailed security policies, standards and controls, which may be those the supplier operates within an ISO27001 information security management system. This security plan shall cover all aspects of the Supplier services including physical security, infrastructure, platforms,</p>

No	Requirement
	<p>transportation of sensitive material, applications and services and interfaces.</p> <p>The security plan shall be reviewed and approved by STA and, if necessary, updated to meet STA requirements prior to the commencement of the services.</p>
<b>S.2</b>	<p>The Supplier must ensure that all physical and logical movement of materials is secure and meets latest HMG Information Assurance requirements.</p> <p>Suppliers must present in advance to the DfE proposals for all methods of movement of materials both physical and logical. These proposals must be pre-agreed by STA prior to any materials movements.</p>
<b>S.3</b>	<p>The Supplier must notify STA of all personnel with access to the services, or secure materials or data related to the services. The Supplier must ensure that those individuals identified are vetted to a level necessary for the sensitivity of the material.</p>
<b>S.4</b>	<p>The Supplier must undertake a business-driven risk assessment process, in line with the <a href="#">Cabinet Office Security Policy Framework (SPF)</a> requirements, to cover all aspects of the Supplier services from infrastructure through to data using an industry-standard structured methodology to determine the likelihood and impact of potential vulnerabilities, threats and adverse events.</p>
<b>S.5</b>	<p>The Supplier must require that any Sub-Contractor(s) are operating acceptable security policies, in line with the government SPF requirements.</p> <p>The Supplier must confirm that a Sub-Contractor's security policies are acceptable, in line with the government SPF requirements prior to letting the relevant sub-contract. The Sub-Contractor must agree to security audits by STA when requested.</p>

No	Requirement
<b>S.6</b>	The Supplier must ensure all staff working on the test materials sign a confidentiality agreement and a security declaration confirming they will comply with the Supplier's security policy and standards. DfE may request evidence of this at any time. Failure to provide evidence will be a breach of the contract.
<b>S.7</b>	No materials or data related to the Services shall be transferred or processed outside of the UK at any time, unless STA has given its explicit consent to such transfer or processing.
<b>S.8</b>	<p>The Supplier must have a policy in place, to be agreed with STA, to ensure the security of data on computers and the security of data on the network.</p> <p>The Supplier shall ensure that:</p> <ul style="list-style-type: none"> <li>▪ all computers are password-protected <ul style="list-style-type: none"> <li>• all computers lock automatically after five minutes of inactivity</li> <li>• STA Data is not stored or transported on removable media devices (CD writer, DVD writer, memory sticks and similar);</li> <li>• Data files are stored on network drives and not the local hard disk; and</li> <li>• all portable media is encrypted.</li> </ul> </li> </ul>
<b>S.9</b>	The handover of any material should be via the STA portal. If for any reason, the portal fails, handover materials will need to be sent via Egress.
<b>S.10</b>	The Supplier will co-operate with STA at all times to allow access to Supplier premises and systems to allow assurance to take place that all plans policies and procedures are being complied with by the Supplier, or to verify any suspected security issues.

## E - Equalities

No	Requirement
<b>E.1</b>	The Supplier will at all times comply with and require that its sub-Suppliers comply with the latest Equalities Legislation.

<b>E.2</b>	The Supplier will provide reports and other Management Information to STA, at intervals to be agreed, to demonstrate that the Supplier and its sub-Suppliers are fulfilling their obligations under the latest Equalities Legislation., including examples of access arrangements.
<b>E.3</b>	The Supplier shall agree and implement any changes to the equality plan in line with STA Change Control Procedure.
<b>E.4</b>	The Supplier shall nominate a representative for all equalities issues.
<b>E.5</b>	The Supplier shall produce an equality plan for each call-off outlining their commitment and compliance to the latest Equalities Legislation and report at regular intervals (checkpoint reports) and include a final statement within the final administration report. The report should also demonstrate how the Supplier continues to meet equal opportunities relating to social value management.
<b>E.6</b>	The Supplier will include within the equality plan the strategy for recruiting and selecting suitably qualified modifiers and experienced staff. The Supplier will provide evidence of a fair, open and transparent process, including but not limited to protective characteristics.
<b>E.7</b>	The Supplier will consider equalities issues when proposing modifications and include in any administration guidance and training information advice on dealing with pupils that require access arrangements.

## **BC - Business continuity**

<b>No</b>	<b>Requirement</b>
<b>BC.1</b>	The Supplier must ensure that their Business Continuity Management System (BCMS) is aligned to current standards, meets the Cabinet Office SPF requirements and has been approved by the Supplier board/executive and by STA.

<b>BC.2</b>	The Supplier must develop, provide and maintain an incident management plan and business continuity plan that ensures no interruption to or failure of service such, that successful delivery of the project is at risk.
<b>BC.3</b>	The Supplier must ensure that the services and associated data are backed up daily. As a minimum, the Supplier must provide a weekly full backup supplemented by a daily incremental backup. The Supplier must ensure that there are at least two copies of each backup stored securely, one of which should be held off-site.
<b>BC.4</b>	The Supplier must ensure that an appropriate media rotation procedure is followed, in line with ISO/IEC 27001 and Government security policies.

## R - Resources

<b>No</b>	<b>Requirement</b>
<b>R.1</b>	The Supplier must have suitably qualified and experienced staff (or immediate plans to access these resources, as appropriate). Skills and qualifications of identified Key Personnel should cover all major aspects of the Service including commercial management, project management, technical skills and general management.
<b>R.2</b>	The Supplier must agree with STA which posts are considered as key posts, where knowledge or skills are critical to success.
<b>R.3</b>	The Supplier must maintain up-to-date CVs of all key personnel and make them available on request.
<b>R.4</b>	The Supplier must provide advance notification to STA of any changes in key personnel. Replacement personnel should have equivalent skills and qualifications and STA reserve the right to refuse proposed replacements.

<b>R.5</b>	Suppliers should demonstrate that where there are plans to use third party sub-contracted resources or services, that these are reliable, available and meet other criteria outlined in this SoR, especially Security. The Supplier must provide and maintain details of who these resources are, how they will be used and how they will be managed.
<b>R.6</b>	<p>When applicable the contractor is required to support the Department's apprenticeship policy whilst delivering this contract. The successful tenderer shall employ apprentices, and report to the Department numbers of apprentices employed during the delivery of this contract.</p> <p>The contractor shall strive towards the target of five per cent of the employees, or that a similar specified proportion of hours worked in delivering the contract (including administration and support staff and sub-contractors), being delivered by one or more employees on a formal apprenticeship programme.</p>

## Q - Quality

<b>No</b>	<b>Requirement</b>
<b>Q.1</b>	<p>The Supplier must adopt quality standards across the range of activities and requirements in the services. Quality should be built in from the start, not 'tested in' later.</p> <p>Relevant standards might include, but are not limited to, British standards in areas such as information security and quality management. The Supplier must identify any relevant quality standards in their response.</p>
<b>Q.2</b>	The Supplier must ensure that all project staff, engaged in the delivery of the services have a level of knowledge of the contractual terms and conditions commensurate with the level of their responsibility and involvement.
<b>Q.3</b>	The Supplier shall nominate an individual who will act as the point of contact for quality issues.

<b>Q.4</b>	The Supplier shall provide the Services in compliance with the quality plan.
<b>Q.5</b>	The Supplier shall agree and implement any changes to the quality plan in line with STA's Change Control Procedure.

### **PQR - Performance and Quality Requirements**

<b>No</b>	<b>Requirement</b>
<b>PQR.1</b>	The Supplier will conform to performance targets in relation to quality, efficiency and adherence to the timetable as laid out in each call-off. Progress towards these targets will be regularly reviewed against agreed performance criteria. Stage payments will be linked to key milestones (critical steps) in the call-off. STA will review quality at each milestone so that payment can be agreed.
<b>PQR.2</b>	The Supplier is expected to be aware of issues relating to any relevant legislation and provide appropriate advice in relation to the materials being developed and advise STA accordingly. The Supplier will ensure access and equality of opportunity, whilst safeguarding the integrity of the assessment.
<b>PQR.3</b>	The Supplier shall ensure that, where used, each and every proposed sub-Contractor, consortium member and adviser abides by the terms of the Framework Agreement and any specific call-off requirements.
<b>PQR.4</b>	During the lifetime of this Framework there may be some changes in the requirements (e.g. responding to new government initiatives) and changes to the structure of STA. Change control procedures will be implemented if necessary and any additional costs incurred by the Supplier as a result of such decisions will need to be agreed in advance by STA. The Supplier will be required to comply with all reasonable requests under the terms of the contract and specification. Working with STA in a flexible and accommodating way is part of the customer-supplier relationship with STA.
<b>PQR.5</b>	The Supplier shall ensure there are: <ul style="list-style-type: none"> <li>• Quality control checks in operation at key points in origination schedules.</li> <li>• Appointed person(s) responsible for ensuring quality of all materials (i.e. with respect to accuracy, completeness, collation and confidentiality as defined elsewhere in this document), and to act as a central point of contact on these issues.</li> <li>• Appointed person(s) familiar with modified materials, and standard materials.</li> </ul>



No	Requirement
<b>PQR.6</b>	The Supplier shall ensure that proofing follows STA's agreed proofing process, and be to the highest standard. There must be appropriate proof reading and quality assurance arrangements in place to ensure that materials are handed to STA without errors at each stage of origination and proofing.

## ET - Exit and transition

No	Requirement
<b>ET.1</b>	The Supplier will provide and maintain a detailed, fully resourced and costed <b>routine</b> exit and transition plan to ensure the smooth transition of Services to a successor service provider.
<b>ET.2</b>	The Supplier will provide and maintain a detailed, fully resourced and costed <b>emergency</b> exit and transition plans to ensure the smooth transition of Services to a successor service provider.
<b>ET.3</b>	The Supplier must provide a detailed statement in the exit and transition plans of all its requirements for the support it requires from DfE to ensure smooth transition of service to DfE or a successor service provider at the Exit and Transition phase, whether routine or emergency.
<b>ET.4</b>	The Supplier must provide, and maintain, a list of all assets, for example materials software, data, people, contracts and other agreements planned to be used in the delivery of services.
<b>ET.5</b>	The Supplier must identify assets that it anticipates will be transferred to DfE on expiry or termination of the framework or on completion of any individual call-off order. The Supplier must also document the arrangements for and handing over of such materials to DfE within its exit and transition plans.

## **Part B: Core Technical Services**

### **Modified test production process**

The modified tests are developed using the following process:

- Items that have been included in the STA's item validation trial (IVT) are reviewed by the Modified Test Agency (MTA) and a report is produced to indicate issues with any items. This information is used by STA to determine which items are suitable for the next stage of the process. *[This activity generally takes place in June.]*
- The MTA receive all Technical Pre-Test (TPT) materials and begin looking at how each question can be modified before the construction of the LIVE test. The MTA modification team start modifying materials, in preparation for Modified Meeting 1. The modifications at this stage are in very draft format, but modifiers will decide how best to present each question in MLP and Braille, ahead of discussions with STA at Meeting 1. *[This activity generally takes place in June]*
- A meeting is held (Modification meeting 1) between STA and the MTA to review all items that have been included in the STA's technical pre-test (TPT) and discuss possible modifications. *[This activity generally takes place in May / June.]*
- Following Modification meeting 1, the MTA produces a 'draft proof' for each item suggesting how the item needs to be modified for each test version (i.e. braille, modified large print or hearing impaired versions). *[This activity generally takes place in July / August.]*
- The draft proof is reviewed by STA and comments are provided. On receipt of the feedback, the MTA produces a discussion proof with final proposed modifications for each item in the TPT and handed over to the STA. This discussion proof is then stored in the item bank until such time that an item is selected for the live test. *[Live test construction generally takes place in October.]*
- Following the construction of the live test, the MTA will receive all the discussion proofs for the selected items. These discussion proofs may have been developed a number of years before depending on when the item was originally written. The MTA will review the discussion proofs and ensure there are no additional modifications they would propose. *[This activity generally takes place in November.]*
- A meeting is held (Modification meeting 2) between STA and the MTA to finalise the modified proofs for all items selected for inclusion in the live test. *[This activity generally takes place in December.]*
- Following Modification meeting 2, the MTA will circulate final copies of the modified proofs. These will be signed off by STA. *[This activity generally takes place in January / February.]*
- The MTA will then construct the modified test versions and undertake full quality assurance checks to ensure the final versions are as intended and error free. STA will undertake one round of proofing on the materials unless significant errors are found in which case additional rounds will be required. *[This activity generally takes place in February.]*
- The MTA will hand over a final sign off copy of each test for STA to approve. *[This activity generally takes place in March.]*
- Once approval to proceed has been provided by STA, the MTA will handover electronic files for printing. *[This activity generally takes place in March.]*

This process is followed for each subject with separate meetings and activities taking place. In some instances, meetings and activities across levels / key stages for the same subject may be combined.

The Supplier is required to provide modified large print and braille versions of the standard tests, and stimulus material to support pupils with hearing impairment and pupils who use sign language for selected assessment. The test production should be of a high standard equivalent to that required for National Curriculum Tests.

At present, modified version are required for all national curriculum tests including the following: the phonics screening check; key stage 1 tests in English reading, English grammar punctuation and spelling and mathematics; key stage 2 tests in English reading, English grammar punctuation and spelling and mathematics. However, this is subject to change depending on government policy. The tests required for modification will be specified in each call off.

All tests take place annually.

#### **EX - Expertise**

<b>No</b>	<b>Requirement</b>
<b>EX.1</b>	The Supplier is responsible for identification/recruitment and management of a team of specialist Modifiers (both Visually Impaired and Hearing Impaired specialists) in order to prepare specifications for modifications.
<b>EX.2</b>	Modifiers will be required to have appropriate specialist knowledge of assessing pupils with visual and hearing impairment, and be subject experts and qualified teachers of pupils with visual/hearing impairment with current or recent experience. Modifiers of braille materials should also be familiar with the process of teaching the subject through braille.
<b>EX.3</b>	The Supplier's project team must have knowledge and experience of modified materials.

#### **MP - Modified Process**

Modification follows a set process. The supplier will need to ensure the requirements of each specific meeting are met.

No	Requirement
<b>MP.1</b>	<p><b>Start up meeting</b></p> <ul style="list-style-type: none"> <li>• The Supplier will be responsible for drawing up a detailed modification timetable for each subject and key stage within the constraints of the call off to be agreed with STA</li> <li>• The supplier will be responsible for developing product descriptions to manage the work to be delivered in the call off.</li> </ul> <p>A separate meeting will also be held with the STA's modified print supplier to ensure dependencies are identified and managed.</p>
<b>MP.2</b>	<p><b>Item Validation Trial Report</b></p> <p>The Supplier will receive copies of all items to be included in the Item Validation Trial (IVT) and complete an initial assessment of them. The supplier must provide a written report to STA with the outcome of their assessment. This report will provide information on all items and state whether they:</p> <ul style="list-style-type: none"> <li>• require no modification</li> <li>• require modification</li> <li>• are unsuitable for modification or</li> <li>• are unsuitable topics for children with special educational needs (SEN), visual impairment (VI) or hearing impairment (HI).</li> </ul>
<b>MP.3</b>	<p><b>Modification meeting 1</b></p> <p>In advance of the meeting, STA will provide the Supplier with copies of all items that are included in the technical pre-test (TPT), including their mark schemes, electronically via the portal. The Supplier will undertake an initial review of the materials to indicate potential modifications required for the different modified versions of the test.</p> <p>The Supplier will attend Meeting 1 with STA staff to recommend and discuss principles of modifications based on the modifier's initial review of the items.</p> <p>The Supplier will be responsible for takes notes at the meeting. These notes will be signed off by STA as an agreed record of decisions.</p>

No	Requirement
<b>MP.4</b>	<p><b>Draft proof and discussion proof</b></p> <p>Following Meeting 1, the Supplier will produce draft proofs for each item based on the discussion in Meeting 1. The supplier will circulate the draft proof to STA and other stakeholders for comment.</p> <p>The supplier will be responsible for the collation of comments and the production of the discussion proof for each item. The discussion proof will be handed over to STA by the Supplier for storage in the item bank.</p>
<b>MP.5</b>	<p><b>Before modification meeting 2</b></p> <p>Once the live test has been constructed, STA will send the Supplier copies of the discussion proofs for all items selected. These will be reviewed by the Supplier and any final proposed changes indicated.</p> <p>Five days before meeting 2, the MTA must send copies of the following to STA:</p> <ul style="list-style-type: none"> <li>• MLP discussion proofs</li> <li>• braille discussion proofs (including diagram sketches/specifications)</li> <li>• HI discussion proofs</li> <li>• the MLP and braille modifications mark-up produced after draft proof</li> <li>• discussion proofs for the guidance notes</li> <li>• discussion proofs for mark scheme amendments.</li> </ul>
<b>MP.6</b>	<p><b>Modification meeting 2</b></p> <p>The Supplier, including project staff and modifiers, will attend Meeting 2 with STA. The purpose of the meeting is to agree final modifications to Braille and MLP versions and to agree any amendments to mark scheme amendments (MSA) and other guidance materials.</p> <p>The Supplier will maintain a complete record of changes agreed at the meeting, to be signed off by STA, and produce a clear final mark-up of MLP and Braille discussion proofs. The meeting will also agree the specification of any physical models required.</p> <p>The Supplier will be responsible for the circulation of final modified proofs after the meeting for sign off.</p>

No	Requirement
<b>MP.7</b>	<p><b>HI Meeting</b></p> <p>The Supplier will hold a meeting with HI specialist(s) to compile guidance to support pupils using BSL and / or lip reading. The specialists must have expertise in modifying for pupils in each subject / key stage using BSL and lip reading.</p>
<b>MP.8</b>	<p><b>First proof MLP, braille and HI</b></p> <p>The Supplier is responsible for the production of 1<sup>st</sup> proof of MLP and Braille versions of the tests and HI materials where appropriate based on the signed off modified proof. The 1<sup>st</sup> proof must be quality assured with reference to Modified Test Production Process (page 10) before dispatch to STA, including a proof by their modifier.</p> <p>The Supplier will send the 1<sup>st</sup> proof of MLP, braille, and HI materials to STA for STA to undertake a proofing round on the documents. The Supplier is responsible for making any amendments to the 1<sup>st</sup> proof based on feedback from STA. If significant amendments are required at 1<sup>st</sup> proof stage, further proofing rounds may be required. If these amendments are required as a result of errors by the Supplier, the costs of additional rounds of proofing will be borne by the Supplier.</p> <p>All materials must be quality assured to the highest standards to ensure that the newly-originated modified tests do not include any errors or unintended differences from the standard tests. This must include:</p> <ul style="list-style-type: none"> <li>• a parallel read of all discussion proofs against the standard tests to ensure that the discussion proof of the modified tests includes any changes which have taken place in the standard test.</li> <li>• a review of modified documents to ensure that a consistent approach has been taken.</li> </ul>
<b>MP.9</b>	<p><b>Sign off (approval to print)</b></p> <p>Following the proofing process, the Supplier will produce a sign off copy and dispatch to STA. This will include a full list of all documents produced to ensure a full set of materials is received.</p> <p>STA will issue an 'Approval to print' proforma once the materials are signed off. The Supplier will then provide electronic versions for handover to print.</p>

No	Requirement
<b>MP.10</b>	<p><b>Project close down report</b></p> <p>At the end of the call off, the Supplier will be responsible for conducting a review of the helpline, modification, proofing and production processes using feedback from schools and STA.</p> <p>The supplier will produce a report to inform future cycles.</p>

## **GM - Guidance Materials – for administration and marking of modified tests**

Refer to Annex 2 for a typical list of all documents

No	Requirement
<b>GM.1</b>	<p>The responsibility for producing administration guidance will be specified within the call off.</p> <p>If the guidance is to be produced by STA, the Supplier will provide STA with the information necessary for the production of guidance materials: outlining all specific requirements for the administration and marking of each modified test.</p> <p>If the guidance is to be produced by the Supplier, STA will provide the Supplier with appropriate templates and previous versions for the presentation of guidance information.</p> <p>Guidance will contain:</p> <ul style="list-style-type: none"> <li>• General and test-specific guidance on how to administer the modified tests to pupils with visual impairment, pupils with a hearing impairment (pupils who use sign language or oralist support)</li> <li>• Specifications for any materials or models provided specifically for the modified tests and their assembly (as necessary)</li> </ul>
<b>GM.2</b>	<p>The Supplier must produce guidance documentation to assist markers to mark the modified versions of the questions, making explicit the differences between the standard and modified mark schemes for each test to enable markers (or teachers in the case of key stage 1 tests) to mark the tests accurately.</p>



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**BP - Braille Papers**

The test booklets and supporting materials for each subject and level are transcribed to braille along with any modifications or amendments as agreed in the IVT Modifier's Report. A transcript of each braille booklet and set of supporting materials is also produced, so that it is clear to a non-braille reader exactly what each test contains.

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No	Requirement

<p><b>BP.1</b></p>	<p>The supplier must construct a braille version of each test in time for Modification meeting 2, along with any required supporting materials (for example a Reading booklet). Any suggested amendments from Modification meeting 2 will need to be actioned in the First Proof.</p> <p>All Braille should be in Unified English Braille (UEB) and must meet the following minimum criteria:</p> <p>Key stage 1 Tests:</p> <ul style="list-style-type: none"> <li>• Key stage 1 braille papers (A4: 297 x 210 mm – portrait), bound with treasury tags.</li> <li>• Uncontracted (Grade 1) Braille (UEB)</li> <li>• <b>Exception:</b> Key stage 1 English reading – reading prompt and answer booklet ('Braille A4': 275 x 297mm), bound with treasury tags.</li> </ul> <p>Key stage 2 Tests:</p> <ul style="list-style-type: none"> <li>• KS2 braille papers ('Braille A4': 275 x 297mm), bound with treasury tags.</li> <li>• Contracted (Grade 2) Braille (UEB)</li> <li>• Uncontracted (Grade 1) Braille (UEB) (KS2 English reading only)</li> </ul> <p>Key Stage 1 and 2 Tests:</p> <ul style="list-style-type: none"> <li>• Diagrams can be integrated within the text, preferably appearing on the facing page to the relevant question</li> <li>• Diagrams / sheets needing pupils to draw upon should be attached loosely at the back of the test booklet</li> </ul> <p><i>Key stage 1 Phonics Screening Check:</i></p> <ul style="list-style-type: none"> <li>• (A4: 297 x 210mm), bound with treasury tags.</li> <li>• Uncontracted (Grade 1) braille (UEB)</li> <li>• No images of monsters required (see example phonics booklet)</li> </ul>
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No	Requirement
	Additional criteria for these and any other assessments will be specified in individual call-offs.
<b>BP.2</b>	The supplier must devise a method for pupils to clearly and unambiguously identify specific parts of a diagram or tactile image where a particular item requires it. [For example, identifying a particular column on a bar chart]
<b>BP.3</b>	The Supplier must provide a transcript of all braille test booklets for all tests, and of all braille supporting materials.

## MOD -3D Models

Certain items in the standard test will have a diagram showing a 3D drawing or object, or other illustration, and may need to have a simplified physical model produced, which a visually impaired pupil or pupil with learning difficulties can safely and easily handle. Guidance on how the test administrator should introduce the model(s) to pupils should also be provided.

No	Requirement
<b>MOD.1</b>	<p>Based on the content of the standard version of the test, the supplier shall advise where the production of a model, or models, will help a visually impaired pupil to access a question and, based on their expertise, suggest suitable specifications for the production of the model(s).</p> <p>The suggested specification for models should be appropriate for the age group, be safe to handle and be durable. The specification for any models must be provided at Modification meeting 2, providing as a minimum, the dimensions, materials, colours, and a 3d technical diagram.</p>
<b>MOD.2</b>	The Supplier must provide guidance to test administrators on the use of the models, and any additional guidance applicable to the mark scheme.

## MLP - Modified Large Print

In the Modified Large Print (MLP) version of the tests, the layout of questions can be amended; text and images can also be simplified or completely removed if not needed for visually impaired pupils to access and answer a question.

Any amendments need to be discussed and agreed with STA.

No	Requirement
<b>MLP.1</b>	<p>The supplier must construct an MLP version of each test following Modification meeting 2, along with any required supporting materials (for example, a Reading booklet). Templates will be provided. The MLP versions must currently meet the following minimum criteria:</p> <p>Key stage 1 and 2:</p> <ul style="list-style-type: none"> <li>• MLP tests produced on Japanese B4 (JPB4 – 257mm x 364mm)</li> <li>• Font used is Helvetica: 18 point for normal text, 24 point for text that is highlighted/emboldened in the standard version of the text.</li> <li>•</li> </ul> <p>Please note - STA are conducting research into producing an A4 booklet using 24pt font for KS2 MLP papers. STA will clearly indicate if the requirement for MLP font size should change.</p> <ul style="list-style-type: none"> <li>•</li> </ul>

## HI - Materials to support hearing impaired (HI) pupils, or those who use sign language

Support materials for hearing impaired (HI) pupils will need to be produced for tests where elements of the test will be read aloud by a teacher or administrator to pupils.

No	Requirement
<b>HI.1</b>	<p>The supplier must produce support materials for Hearing Impaired (HI) pupils for test materials, which are delivered orally.</p> <p>These may be in the form of “flash cards”, or other materials, which can be presented to pupils to aid in the understanding of test questions.</p>

**SH - Specialist Helpline**

The Supplier may need to provide a specialist helpline service for schools and other users of modified tests. Helpline requirements will be clearly defined for each call off.

No	Requirement
<b>SH.1</b>	The Supplier will ensure that the Specialist Helpline is operational throughout full relevant test cycle, i.e. from start of the school year in September through to the end of the summer term.
<b>SH.2</b>	In conjunction with and in addition to handling and recording schools' orders, the helpline will be able to provide specialist advice, including advice on appropriate use of modified test formats, ordering and distribution, and administration of the tests (such as access arrangements).
<b>SH.3</b>	The Supplier must ensure the helpline is sufficiently resourced to cope with peak demands. The key periods are during the test order window (Oct-Feb), the dispatch window (April) and the test administration window (generally May, although Phonics checks are administered in June).
<b>SH.4</b>	Members of the Supplier's project team will be required to provide advice to Supplier helpline staff on queries requiring specialist VI or HI input (any contentious issues should be passed to STA). If this advice is not available in the project team or from the team of modifiers, the supplier will be required to bring in external specialist knowledge for this purpose.
<b>SH.5</b>	<p>The Supplier will ensure that:</p> <ul style="list-style-type: none"> <li>• 95% of calls to the Specialist Helpline are answered within 60 seconds.</li> <li>• The Specialist Helpline is operational from 08.30 to 17.30 (08.00 to 18.00 during test weeks) on school days.</li> <li>• There is a means of capturing a message from the enquirer outside of the above hours. Messages must be acknowledged the next working day.</li> <li>• Customer telephone enquiries are responded to on the same or next working day.</li> <li>• Customer written enquiries are responded to within 2 working days and on the same day during test weeks.</li> <li>• Customer complaints are responded to within 5 working days.</li> <li>• All schools' enquiries are logged onto an appropriate database.</li> <li>• Specialist HI and VI advice on ordering and administering the modified tests is available.</li> </ul>

No	Requirement
<b>SH.6</b>	The supplier will help to validate school orders for modified tests by contacting those STA identifies as having anomalies. STA will provide a spreadsheet to the supplier to record the outcome of the contact that will be returned to STA. STA will provide the contact list weekly on a Monday and the Supplier should return the update sheet to STA on Friday afternoon.

Indicative figures based on the 2017/8 cycle (figures rounded to the nearest 50)

2.5.3 Key stages 1 and 2 statutory tests – approximately 1500 inbound and outbound telephone calls; approximately 3000 e-mails sent and received; approximately 1000 orders validated per year

2.5.4 Past papers print on demand – up to 500 orders

### **OM - Order Management**

The Supplier may be responsible for receiving, and logging on the Primary Assessment Gateway (PAG)/communicating to the test operations supplier, details of any orders for modified test materials that have not been directly entered on the website by schools and providing order updates directly to the test operations supplier to an agreed schedule.

Order management will generally involve logging (or updating) orders after the official deadline for ordering. Order management requirements will be clearly defined for each call off.

No	Requirement
<b>OM.1</b>	The Supplier should capture orders for modified tests on behalf of a school (for example, in response to a helpdesk call).
<b>OM.2</b>	The Supplier will be responsible for orders placed after the official deadlines for the statutory test orders (e.g. a late diagnosis, or school transfer) must be honoured up to and including the test administration period as far as reasonably possible.
<b>OM.3</b>	The Supplier will also be responsible for validating all orders that do not meet validation criteria pre-agreed between STA and the Supplier.

No	Requirement
<b>OM.4</b>	<p>The Supplier shall ensure that all schools' orders are received and validated:</p> <ul style="list-style-type: none"> <li>• on an ongoing basis as soon as the test orders system is made available (from the beginning of October to mid-June) and completed within 14 days of the test orders system closing;</li> <li>• within 24 hours for late orders;</li> <li>• immediately for orders received the week before tests or during test weeks;</li> <li>• with no more than 1% error tolerance in accuracy of data.</li> </ul>
<b>OM.5</b>	<p>The Supplier must liaise closely with STA with regards to recording and transferring accurate information about test orders securely. (If this is via the PAG, then STA will be responsible for providing log-in and username details). If the Supplier is unable to update the PAG directly for any reason, they will be expected to provide updates to STA in an alternative compatible format.</p>

### PPS - Past Paper Service

Modified tests from previous cycles are often used by schools to help determine the most appropriate type of modified paper for a pupil.

No	Requirement
<b>PPS.1</b>	<p>The Supplier is required to provide an on-demand past paper service to schools that contact the Helpline requesting practice materials.</p>
<b>PPS.2</b>	<p>The Supplier shall fulfil orders for past papers (for the previous three years' tests) in MLP and braille. Files will be supplied by STA, where needed, to fulfil these orders. (Approximately 500 papers ordered per year)</p>

### DR - Delivery Requirements

No	Requirement
<b>DR.1</b>	<p>Final agreed versions of the modified test materials must be supplied by the Supplier in hardcopy and electronic (InDesign, or compatible open artwork files by prior agreement) to STA for printing and distribution to an agreed timeline and format.</p>



No	Requirement
<b>DR.2</b>	The Supplier will deposit materials under development with STA in both hard and electronic copy at key stages throughout the cycle. A schedule for deposits will be agreed at the beginning of the cycle(s).
<b>DR.3</b>	<p>Materials will need to be supplied at each appropriate stage in the following format:</p> <ul style="list-style-type: none"> <li>• a minimum of 2 hard copies</li> <li>• PDF files and/or open artwork files as required. PDF files and/or open artwork files as required</li> </ul> <p>A full list of all documents produced must be provided to ensure completeness.</p>
<b>DR.4</b>	The copyright of all final materials will rest with STA.
<b>DR.5</b>	The Supplier must produce all materials in accordance with the principles and technical requirements in <b>Annex 1 Guidance notes for use by modifiers</b> , and with the requirements of the Ofqual regulatory framework and STA's house style.
<b>DR.6</b>	The Supplier shall work with STA to agree a schedule for origination, proofing and sign off.
<b>DR.7</b>	The Supplier shall provide the test materials so that they are consistent with, and provide continuity with previous years in terms of style and format.

**Service level agreement / quality standards**

Key Elements	Key Deliverables	Success Criteria	Measurement
Appointment and training of modifiers	<ul style="list-style-type: none"> <li>▪ Sufficient modifiers to provide specialist VI and HI advice.</li> <li>▪ Training sessions for modifiers and</li> <li>▪ Project handbook.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Modifiers suitably qualified i.e. with a clear understanding of the modification process and the range and type of modifications that are appropriate to maintaining the nature and demand of the test without advantaging or disadvantaging the pupil.</li> <li>▪ Briefing sessions and handbook provided to agreed schedule (0% slippage) and of required quality.</li> <li>▪ Modifiers suitably trained and capable of delivering contract objectives to required quality and agreed schedule (0% slippage).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Initial submission of CVs and or qualifications of the modifiers for approval by STA.</li> <li>▪ Quality of modifiers' advice as demonstrated the quality of reports and input to proofs, i.e. consistent with principles of modification and clearly reflecting all agreed decisions.</li> <li>▪ STA to agree briefing agenda &amp; handbook contents and to attend and confirm quality of training sessions.</li> <li>▪ Stakeholder feedback is positive about materials</li> </ul>

STA 0299 Agreement – Modified Tests Framework 2023 - 2026

Key Elements	Key Deliverables	Success Criteria	Measurement
Proofing/sign off of master copies of tests	<ul style="list-style-type: none"> <li>Proofs of master copies from draft proof to sign-off ('approval to print'), and collated comments.</li> </ul>	<ul style="list-style-type: none"> <li>Discussion and first proofs as near final version of materials as possible.</li> <li>Discussion proof to:               <ul style="list-style-type: none"> <li>conform to modifier's specification;</li> <li>match standard handover except where modifications agreed</li> <li>be complete (e.g. containing diagrams, or specifications in the case of models and braille diagrams, subject-specific information in mental mathematics scripts);</li> <li>take into account any format, style or standard wording (e.g. of copyright statements) agreed with STA.</li> </ul> </li> <li>Production of each proof to agreed schedule (0% slippage) and quality</li> <li>No more than 4 errors* at 1<sup>st</sup> proof and no errors at sign off. Proofs to contain all agreed changes, and error must be actioned by next proof stage.</li> </ul> <p>*A proofing error is defined as:</p> <ul style="list-style-type: none"> <li>content not correct regardless of whether it has been picked up by STA or where any changes suggested by STA have not acted upon. It would not necessarily include an amendment to wording provided at the time of, or after the</li> </ul>	<ul style="list-style-type: none"> <li>E-mail confirmation by Supplier to STA as each stage completed (despatch, receipt of materials).</li> <li>STA to assess and report on quality of materials at each proof stage, signing off materials at final proof.</li> <li>Updates from Supplier on issues/progress at monthly project management meetings.</li> </ul>

STA 0299 Agreement – Modified Tests Framework 2023 - 2026

Key Elements	Key Deliverables	Success Criteria	Measurement
		<p>final proof, but would include any grammatical, punctuation, spelling or stylistic errors identified in the final proofs;</p> <ul style="list-style-type: none"> <li>○ new errors appearing in a proof or sign off version that did not arise from implementing a mark-up instruction in a previous version.</li> <li>▪ Sufficient checks carried out to ensure high quality proofs of test and guidance materials at key stages of the proofing and production process e.g. by Quality Manager.</li> <li>▪ Proofs based on common and clear agreement of decisions made at meetings with STA subject researchers and each proof stage, supported by collated comments from previous mark-ups that are comprehensive and clearly state author of comments and decisions reached.</li> <li>▪ Relevant STA subject researcher consulted on any difference of opinion or ambiguity in mark-ups prior to production of next proof (or explanation provided where an instruction is not followed and agreement reached with researcher).</li> </ul>	

STA 0299 Agreement – Modified Tests Framework 2023 - 2026

Key Elements	Key Deliverables	Success Criteria	Measurement
Guidance materials	<ul style="list-style-type: none"> <li>▪ Proofs of guidance and associated materials from draft to sign-off ('approval to print'), and collated comments.</li> </ul>	<ul style="list-style-type: none"> <li>▪ As for 'proofing/sign off'.</li> <li>▪ Draft and discussion proofs of guidance, models and diagrams (or specifications for) and mark scheme amendments provided, alongside tests as far as possible. Guidance may follow separate schedule, but this must be as close to the test materials proofing schedule as possible.</li> <li>▪ Guidance accessible to non-specialists.</li> </ul>	<ul style="list-style-type: none"> <li>▪ E-mail confirmation by Supplier to STA as each stage completed (despatch, receipt of materials).</li> <li>▪ Updates from Supplier at monthly project management meetings on quality of proofs and progress against deadlines.</li> <li>▪ STA to assess and report on quality of materials at each proof stage, signing off materials at final proof stage.</li> </ul>
School orders	<ul style="list-style-type: none"> <li>▪ Receipt and validation of school test orders.</li> </ul>	<ul style="list-style-type: none"> <li>▪ All schools' orders received and validated:               <ul style="list-style-type: none"> <li>○ validation within 14 working days of order deadline passing for STA website orders;</li> <li>○ validated within 24 hours for late orders;</li> <li>○ immediate validation for orders received week before tests or during test weeks;</li> </ul> </li> <li>▪ Validation criteria to be agreed with STA.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Summary reports from Supplier at fortnightly KIT meetings on number of orders received and validated, and daily at peak times (mid-March to the end of test week), highlighting key points/trends.</li> </ul>

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Key Elements	Key Deliverables	Success Criteria	Measurement
Database	<ul style="list-style-type: none"> <li>▪ Maintaining on site database of customer enquiries.</li> <li>▪ Maintaining database of orders for KS1.</li> <li>▪ Updating STA's test orders database (KS2).</li> </ul>	<ul style="list-style-type: none"> <li>▪ All schools' enquiries/orders logged accurately</li> <li>▪ Test orders databases updated accurately and daily.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of errors in order data following validation (excluding errors resulting from failure of school to identify incorrect order information following receipt of order confirmation from Supplier)</li> </ul>
Helpline	Answering customer enquiries (from schools, LAs, etc.), including enquiries about orders.	<ul style="list-style-type: none"> <li>▪ 95% of calls to be answered within 60 seconds.</li> <li>▪ Customer helplines to be operational from 08.30 to 17.30 h (08:00 to 18:00 during test weeks) on school days.</li> <li>▪ Customer telephone enquiries responded to on the same or next working day.</li> <li>▪ Customer written enquiries are responded to within 7 working days.</li> <li>▪ Customer complaints are responded to within 5 working days.</li> <li>▪ All schools' enquiries are logged on database.</li> <li>• Specialist HI and VI advice on ordering and administering the modified tests available.</li> <li>▪ Helpline to meet 'out of hours' success criteria under 'Quality control' below.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Updates on call and correspondence logs from Supplier at monthly project management meetings.</li> <li>▪ Number of verifiable negative comments about service provided by Supplier helpline from customers.</li> </ul>

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Key Elements	Key Deliverables	Success Criteria	Measurement
Project coordination	<ul style="list-style-type: none"> <li>Overall coordination of modified tests production across different Supplier sites (where relevant), and with external stakeholders, including:</li> <li>Management of relevant personnel, systems, etc.</li> <li>Regular review of management systems</li> <li>Schedule for each stage of origination process.</li> <li>Participation in monthly or more frequent project management meetings.</li> <li>Provision of updates/reports: checkpoint reports, risk registers, financial spreadsheets, call/correspondence and order logs.</li> <li>project review at end of each test cycle</li> </ul>	<ul style="list-style-type: none"> <li>Delivery of project objectives to agreed schedule and specification (as defined elsewhere in SLA), and any issues/problems dealt with promptly and in consultation with STA.</li> <li>Procedural guide discussed and agreed with STA during first month of cycle.</li> <li>First draft schedule covering all stages of cycle, discussed and agreed with STA. Schedule subject to regular reviews (at least monthly, or as changes identified).</li> <li>STA consulted on any changes to schedules, and subject to STA's agreement, revised schedule provided immediately.</li> <li>High quality error-free and consistent materials.</li> <li>Regular provision reports/updates (weekly or more frequently during peak periods) in simple format to be agreed with STA.</li> <li>High quality project review reports identifying lessons learned from test cycle and providing clear steer for future.</li> <li>MI systems compatible with those of STA (and other suppliers if necessary).</li> </ul>	<ul style="list-style-type: none"> <li>Via reports provided by Supplier at monthly project management meetings on quality of proofing, adherence to schedules, etc., supplemented by conference calls, e-mail and telephone calls (as appropriate) to feed into regular performance reviews.</li> <li>Number of reports of errors/breaches of confidentiality.</li> <li>STA to assess and sign off quality of project review reports.</li> </ul>

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Key Elements	Key Deliverables	Success Criteria	Measurement
Quality control	<ul style="list-style-type: none"> <li>Effective quality control checks.</li> <li>Appointment of designated member of Supplier's staff for quality control.</li> </ul>	<ul style="list-style-type: none"> <li>Quality control checks in operation at key points in origination schedules.</li> <li>Appointed person responsible for ensuring quality of all materials (i.e. with respect to accuracy, completeness, collation and confidentiality as defined elsewhere in this document), and to act as a central point of contact on these issues.</li> <li>Appointed person(s) familiar with modified materials, including MLP, Braille, and standard materials.</li> <li>STA agreement of member of staff appointed to this role.</li> <li>Out of hours requirement before test days: named helpline staff and MTA managers to check text messages (and if possible e-mails) from 7 am to 10pm from Friday before test week to the end of test week, and if problems identified in tests post-sign off urgently require resolution for tests the following working day, arrive at work by 7am.</li> </ul>	<ul style="list-style-type: none"> <li>STA to agree quality control checks.</li> <li>Updates from Supplier at monthly project management meetings.</li> <li>Problems identified in tests post sign-off resolved before tests administered where possible.</li> </ul>
Secure packaging	Packaging to maintain confidentiality of test information.	<ul style="list-style-type: none"> <li>All test and guidance packaging sufficiently opaque, tightly fitting, and tamper and tear proof to maintain security and confidentiality.</li> </ul>	<ul style="list-style-type: none"> <li>Number of reports of errors/breaches of confidentiality</li> <li>Updates from Supplier at monthly project management meetings, and daily at peak</li> </ul>



STA 0299 Agreement – Modified Tests Framework 2023 - 2026

Key Elements	Key Deliverables	Success Criteria	Measurement
		<ul style="list-style-type: none"> <li>Minimum 99% secure delivery of packages and maintenance of confidentiality of contents.</li> <li>Immediate follow up to minimise/avoid breaches of confidentiality.</li> <li>Report any loss of/failure to deliver materials to STA within 3 hours of discovery. Written report provided same day. Daily updates provided thereafter.</li> </ul>	times (mid-March to the end of test week).
Security	<ul style="list-style-type: none"> <li>All materials handled securely to maintain confidentiality at all times, in accordance with STA's Security requirements</li> <li>HMG SPF Commercial assurance compliance</li> <li>HMG Cyber essentials scheme compliance</li> </ul>	<ul style="list-style-type: none"> <li>All materials must be handled and stored in line with requirements specified by STA</li> <li>Follow up on packages that are not received by scheduled date and time within 3 hours to minimise/avoid breaches of confidentiality.</li> <li>Reporting of any security breaches (actual or potential) within 3 hours of discovery.</li> <li>Statutory KS2 test proof to be via a carrier that provides instant feedback on the location of packages (e.g. timed next day delivery service).</li> <li>STA sign-off of security requirements compliance</li> </ul>	<ul style="list-style-type: none"> <li>Via a monthly performance report on security breaches or non breaches</li> <li>Relevant documentation, including risks register and Security action plan (if required) submitted to STA and approved.</li> </ul>

## **Annex 1**

### **Guidance for modifiers**



Guidance for  
modifiers .doc

## **Annex 2**

### **List of modified tests and supporting materials**



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## **Annex 3**

### **Glossary of Terms**



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Glossary.docx

## **Schedule 2 - Charges and Payments**

### **1 Charges**

#### **1.1**



### **2 Schedule of Payments**

- 2.1 The Payment Schedule will be shown in each Call-Off Contract.
- 2.2 Funds allocated to a particular expenditure heading in the Payment Schedule are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only. The allocation of funds in the Payment Schedule may not be altered except with the prior written consent of the Department.
- 2.3 The Supplier shall maintain full and accurate accounts for the Service against the expenditure headings in the Payment Schedule. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Agreement. Input and output VAT shall be included as separate items in such accounts.
- 2.4 The Supplier shall permit duly authorised staff or agents of the Department or the National Audit Office to examine the accounts at any reasonable time and shall furnish oral or written explanations of the account if required. The Department may have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Supplier has used the Department's resources in the performance of this Agreement.

### **3 Invoicing**

- 3.1 Invoices shall be prepared by the Supplier monthly in arrears and shall be detailed against completion of the Milestones and Key Milestones specified in the Call-Off

- Contract and the expenditure headings set out in the Payments Schedule. The Supplier or his or her nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Supplier on the Service in accordance with the Agreement and that the invoice does not include any costs being claimed from any other body or individual or from the Department within the terms of another contract.
- 3.2 Invoices should be sent within 30 days of the Department's Acceptance to: Purchase to Pay, Shared Services, 3<sup>rd</sup> floor Companies House, Crown Way, Cardiff, CF14 3UW.
- 3.3 The Supplier shall ensure that its invoices contain the following:
- 3.3.1 a unique invoice number;
  - 3.3.2 the Service(s) provided to which the relevant Charge(s) relate;
  - 3.3.3 the Agreement reference number;
  - 3.3.4 the Call-Off Contract reference number;
  - 3.3.5 the dates on which the Services to which each of the invoiced Charges relate were performed;
  - 3.3.6 the methodology applied to calculate the Charges;
  - 3.3.7 the total Charges gross and net of any applicable deductions and, separately, the amount of any disbursements properly chargeable to the Department under the terms of the Agreement;
  - 3.3.8 details of any service credits or delay payments or similar deductions that shall apply to the Charges detailed on the invoice;
  - 3.3.9 reference to any reports required by the Department in respect of the Services to which the Charges detailed on the invoice relate (or, in the case of reports issued by the Supplier for validation by the Department, to any such reports as are validated by the Department in respect of the Services);
  - 3.3.10 the Supplier's full address, VAT number (if applicable) and the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 3.4 Each invoice shall at all times be accompanied by sufficient information (including any relevant Management Information) ("**Supporting Documentation**") to enable the Department to reasonably assess whether the Charges detailed thereon are properly payable. Any such assessment by the Department shall not be conclusive. The Supplier undertakes to provide to the Department any other documentation reasonably required by the Department from time to time to substantiate an invoice.
- 3.5 The Supplier shall submit all invoices and Supporting Documentation in such format as the Department may reasonably specify from time to time with a copy (including any Supporting Documentation) to the Contract manager (or such other person and at such place as the Department, acting reasonably, may notify to the Supplier from time to time).
- 3.6 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Department in writing.

- 3.7 The Supplier shall submit its invoice for the Charges in respect of all the Service Elements which are due after the successful completion of all such Service Elements.
- 3.8 Service Elements are only successfully completed when Acceptance has taken place in respect of those Service Elements in accordance with Clause 35 (Acceptance Testing).
- 3.9 The Supplier shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in the Department's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Department shall only be liable to reimburse so much (if any) of the expenditure disallowed as, in the Department's reasonable opinion after consultation with the Supplier, would reasonably have been required for that purpose.
- 3.10 If this Agreement is terminated by the Department due to the Suppliers insolvency or default at any time before completion of the Service, the Department shall only be liable under paragraph 2.1 of this Schedule 2 to reimburse eligible payments made by, or due to, the Supplier before the date of termination.
- 3.11 On completion of the Service or on termination of this Agreement, the Supplier shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Service. The final invoice shall be submitted not later than 30 days after the date of completion of the Service.
- 3.12 The Department shall not be obliged to pay the final invoice until the Supplier has carried out all the elements of the Service specified in the relevant Call-Off Contract.
- 3.13 It shall be the responsibility of the Supplier to ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the Department all amounts due to be reimbursed under this Agreement shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.

#### **4 Taxation**

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

### Schedule 3 - Form of Call-Off Contract

<b>Modified Test Framework Agreement – STA 0299</b>
<b>Call-Off Contract No:</b>
<b>Title:</b>

Pursuant to the terms of the Modified Test Framework Agreement (STA 00299):

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

#### 1. Background

[Insert]

#### 2. Functional Requirements

<b>Subjects:</b>	
<b>Level (or Other Measure) Assessed:</b>	
<b>Key Stage or Other Measure:</b>	

#### 3. Required Service Elements

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

<b>Services [and Deliverables] Required:</b>

#### 4. Key Milestones

iD	Description	Key Milestone Acceptance Criteria	Completion Date	Evidence Required

#### 5. Key Payment Milestones and Key Payment Milestones Dates

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

iD	Amount	Key Milestone Payment Date

#### 6. Contract Management Arrangements


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

Signed for and on behalf of the Supplier:
Name and Title:
Date:

Signed for and on behalf of the Department for Education:
Name and Title:
Date:



## **Schedule 4 – Governance and Performance Monitoring**

### **1. Service Management**

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

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

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

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

### **2. Management Information**

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

2.2 In addition, the Supplier must:

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

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

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

### **3. Contract Management Reviews**

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

3.1.1 planning;

3.1.2 progress;

3.1.3 risk management;

3.1.4 issue management;

3.1.5 continuous improvement;

3.1.6 proposed changes;

3.1.7 lessons learnt;

3.1.8 exit management.

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

## **Schedule 5 – Change Control Procedures**

### **1 Principles**

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

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

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

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

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

### **5 Procedures**

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

5.1.1 no further action being taken;

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

5.1.3 a recommendation to change the Services by the Supplier.

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

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

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

5.5 Each CCN shall contain:

5.5.1 the title of the change;

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

5.5.3 the reason for the change;

5.5.4 full details of the change including any specifications;

5.5.5 the price, if any, of the change;

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

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

**Schedule 5 – Annex 1 – Change Control Note**

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

## **Schedule 6 – The Departmental Dependencies**

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

6.2 The Department will:

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

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

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

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

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

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

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

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

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

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

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

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

## Schedule 7 – Template for Exit Management Plan

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

### 1 Document History (Section 1)

#### Document location

*[Insert document location details.]*

#### Revision history

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

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

#### Required approvals

*[INSERT details of the required approvals.]*

Name	Title	Date of Issue	Version

#### Distribution

*[INSERT distribution list.]*

Name	Title	Date of Issue	Version

### 2 Purpose (Section 2)

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

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

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

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

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

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

Section 1: Document History

Section 2: Purpose

Section 3: Exit Management Structures

Section 4: Required actions

Section 5: Timetable

Section 6: Charging arrangements

### **3. Exit management Structures (Section 3)**

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

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

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

#### **Exit Project Board**

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

#### **Exit Project Reporting**

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

### **4. Required Actions (Section 4)**

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

Subsection 4.2: Supplier Assets



Subsection 4.3: Systems and Software

Subsection 4.4: Data

Subsection 4.5: Contracts

Subsection 4.6: Documentation

Subsection 4.7: Training and knowledge transfer

Subsection 4.8: Staff matters

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

#### **Supplier Assets (Subsection 4.2)**

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

#### **Systems and Software (Subsection 4.3)**

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

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

- ceasing all non-critical Software changes (by agreement with STA);
- notifying subcontractors of procedures to be followed during the Exit Phase and providing management to ensure these procedures are followed;
- providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Successor Operator after the Exit Phase;

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

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

#### **Data (Subsection 4.4)**

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

#### **Contracts (Subsection 4.5)**

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

#### **Documentation (Subsection 4.6)**

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

#### **Training and knowledge transfer (Subsection 4.7)**

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

#### **Staff matters (Subsection 4.8)**

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

**6 Timetable and milestones (Section 5)**

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

**7 Charging Arrangements (Section 6)**

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

## **Schedule 8 – Call-off Procedure**

### **1. AWARD PROCEDURE**

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

1.2 If a Contracting Authority can determine that:

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

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

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

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

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

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

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

### **2. DIRECT ORDERING WITHOUT A FURTHER COMPETITION**

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

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

2.2.1 develop a clear Statement of Requirements;

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

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

### **3. FURTHER COMPETITION PROCEDURE**

#### **Contracting Authority's Obligations**

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

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

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

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

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

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

(i) invite the Framework Suppliers identified in accordance with paragraph 3.1.1 to submit a tender in writing for each proposed Call Off Contract to be awarded by giving written notice by email to the relevant Supplier Representative of each Framework Supplier;

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

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

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

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

(a) state the Services Requirements;

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

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

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

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

#### The Suppliers Obligations

- 3.2 The Supplier shall in writing, by the time and date specified by the Contracting Authority following an invitation to tender pursuant to paragraph 3.1.3 above, provide the Contracting Authority with either:
- 3.2.1 a statement to the effect that it does not wish to tender in relation to the relevant Services Requirements; or
- 3.2.2 the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Supplier submits such a tender, it should include, as a minimum:
- (a) an email response subject line to comprise unique reference number and Supplier name, so as to clearly identify the Supplier;
  - (b) a brief summary, in the email (followed by a confirmation letter), stating that the Supplier is bidding for the Statement of Requirements;
  - (c) a proposal covering the Services Requirements; and
- 3.2.3 The Supplier shall ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall be based on the Charging Structure and take into account any discount to which the Contracting Authority may be entitled as set out in Framework Schedule 3 (Framework Prices and Charging Structure).
- 3.2.4 The Supplier agrees that:
- (a) all tenders submitted by the Supplier in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall remain open for acceptance by the Contracting Authority for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Contracting Authority in accordance with the Call Off Procedure); and
  - (b) all tenders submitted by the Supplier are made and will be made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:
    - (i) communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and
    - (ii) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

#### **4. E-AUCTIONS**

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

- 4.2 The Supplier acknowledges that Contracting Authorities may wish to undertake an electronic reverse auction, where Framework Suppliers compete in real time by bidding as the auction unfolds ("Electronic Reverse Auction").
- 4.3 Before undertaking an Electronic Reverse Auction, the relevant Contracting Authority will make an initial full evaluation of all tenders received in response to its Statement of Requirements. The Contracting Authority will then invite to the Electronic Reverse Auction only those tenders that are admissible in accordance with the Regulations. The invitation shall be accompanied by the outcome of the full initial evaluation of the relevant tenders.
- 4.4 The Contracting Authority will inform the Framework Suppliers of the specification for the Electronic Reverse Auction which shall include:
- 4.4.1 the information to be provided at auction, which must be expressed in figures or percentages of the specified quantifiable features;
- 4.4.2 the mathematical formula to be used to determine automatic ranking of bids on the basis of new prices and/or new values submitted;
- 4.4.3 any limits on the values which may be submitted;
- 4.4.4 a description of any information which will be made available to Framework Suppliers in the course of the Electronic Reverse Auction, and when it will be made available to them;
- 4.4.5 the conditions under which Framework Suppliers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- 4.4.6 relevant information concerning the electronic equipment used and the arrangements and technical specification for connection;
- 4.4.7 subject to paragraph 4.5, the date and time of the start of the Electronic Reverse Auction; and
- 4.4.8 details of when and how the Electronic Reverse Auction will close.
- 4.5 The Electronic Reverse Auction may not start sooner than two (2) Working Days after the date on which the specification for the Electronic Reverse Auction has been issued.
- 4.6 Throughout each phase of the Electronic Reverse Auction the Contracting Authority will communicate to all Framework Suppliers sufficient information to enable them to ascertain their relative ranking.
- 4.7 The Supplier acknowledges and agrees that:
- 4.7.1 the Contracting Authority and its officers, servants, agents, group companies, assignees and customers (including the Authority) do not guarantee that its access to the Electronic Reverse Auction will be uninterrupted or error-free;
- 4.7.2 its access to the Electronic Reverse Auction may occasionally be restricted to allow for repairs or maintenance; and
- 4.7.3 it will comply with all such rules that may be imposed by the Contracting Authority in relation to the operation of the Electronic Reverse Auction.
- 4.8 The Contracting Authority will close the Electronic Reverse Auction on the basis of:



- 4.8.1. a date and time fixed in advance;
- 4.8.2. when no new prices or values meeting the minimum differences required pursuant to paragraph 4.4.5 have been received within the prescribed elapsed time period; or
- 4.8.3. when all the phases have been completed.

## **5. NO AWARD**

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

## **6. RESPONSIBILITY FOR AWARDS**

- 6.1 The Supplier acknowledges that each Contracting Authority is independently responsible for the conduct of its award of Call Off Contracts under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
  - 6.1.1 the conduct of Other Contracting Authorities in relation to this Framework Agreement; or
  - 6.1.2 the performance or non-performance of any Call Off Contracts between the Supplier and Other Contracting Authorities entered into pursuant to this Framework Agreement.

## **7. CALL OFF AWARD PROCEDURE**

- 7.1 Subject to paragraphs 1 to 6 above, a Contracting Authority may award a Call Off Contract with the Supplier by sending (including electronically) a signed Order Form substantially in the form (as may be amended or refined by the Contracting Authority in accordance with paragraph 3.1.2 above) of the Template Order Form set out in Framework Schedule 4 (Template Order Form and Template Call Off Terms). The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Contract) which is not as described in this paragraph 7 shall not constitute a Call Off Contract under this Framework Agreement.
- 7.2 On receipt of an Order Form as described in paragraph 7.1 from a Contracting Authority the Supplier shall accept the Call Off Contract by promptly signing and returning (including by electronic means) a copy of the Order Form to the Contracting Authority concerned.
- 7.3 On receipt of the signed Order form from the Supplier, the Contracting Authority shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and a Call Off Contract shall be formed.

Schedule 9 – Call-off Award Criteria

1. GENERAL

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

2. PART A: DIRECT AWARD

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

Criteria
Value for money: e.g. the Contracting Authority believes that the Supplier provides demonstrable value for money, which may include but is not limited to: <ul style="list-style-type: none"><li>• Cost effectiveness;</li><li>• Price; and</li><li>• Quality.</li></ul>

3. PART B: FURTHER COMPETITION AWARD CRITERIA

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

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

## Schedule 10 – Departmental Security Requirements

### 1. Definitions

In this Schedule, the following words shall have the following meanings and they shall supplement the other definitions in the Contract:

“BPSS” “Baseline Personnel Security Standard”	the Government’s HMG Baseline Personal Security Standard. Further information can be found at: <a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a>
“CCSC” “Certified Cyber Security Consultancy”	is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. See website: <a href="https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy">https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</a>
“CCP” “Certified Professional”	is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession. See website: <a href="https://www.ncsc.gov.uk/information/about-certified-professional-scheme">https://www.ncsc.gov.uk/information/about-certified-professional-scheme</a>
“CPA” “Commercial Product Assurance” [formerly called “CESG Product Assurance”]	is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. See website: <a href="https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa">https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</a>
“Cyber Essentials” “Cyber Essentials Plus”	Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.  There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to these providers: <a href="https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body">https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body</a>

<p>“Data”</p> <p>“Data Controller”</p> <p>“Data Protection Officer”</p> <p>“Data Processor”</p> <p>“Personal Data”</p> <p>“Personal Data requiring Sensitive Processing”</p> <p>“Data Subject”, “Process” and “Processing”</p>	<p>shall have the meanings given to those terms by the Data Protection Legislation</p>
<p>"Buyer's Data"</p> <p>"Buyer's Information"</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Supplier by or on behalf of the Buyer; or</p> <p>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Buyer is the Data Controller;</p>
<p>“Departmental Security Standards”</p>	<p>the Buyer's security policy or any standards, procedures, process or specification for security that the Supplier is required to deliver.</p>
<p>“Digital Marketplace / G-Cloud”</p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.</p>
<p>“End User Devices”</p>	<p>the personal computer or consumer devices that store or process information.</p>
<p>“Good Industry Standard”</p> <p>“Industry Good Standard”</p>	<p>the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>“GSC”</p> <p>“GSCP”</p>	<p>the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>
<p>“HMG”</p>	<p>Her Majesty's Government</p>

“ICT”	Information and Communications Technology (ICT) and is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
“ISO/IEC 27001” “ISO 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	is the International Standard describing for Business Continuity
“IT Security Health Check (ITSHC)” “IT Health Check (ITHC)” “Penetration Testing”	an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.
“Need-to-Know”	the Need-to-Know principle employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.
“NCSC”	the National Cyber Security Centre (NCSC) is the UK government’s National Technical Authority for Information Assurance. The NCSC website is <a href="https://www.ncsc.gov.uk">https://www.ncsc.gov.uk</a>
“OFFICIAL” “OFFICIAL-SENSITIVE”	the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP).  the term ‘OFFICIAL–SENSITIVE is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the GSCP.
“RBAC” “Role Based Access Control”	Role Based Access Control, a method of restricting a person’s or process’ access to information depending on the role or functions assigned to them.
“Storage Area Network” “SAN”	an information storage system typically presenting block based storage (i.e. disks or virtual disks) over a network interface rather than using physically connected storage.
“Secure Sanitisation”	the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.

	<p>NCSC Guidance can be found at:  <a href="https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media">https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</a></p> <p>The disposal of physical documents and hardcopy materials advice can be found at:  <a href="https://www.cpni.gov.uk/secure-destruction-0">https://www.cpni.gov.uk/secure-destruction-0</a></p>
<p>“Security and Information Risk Advisor”  “CCP SIRA”  “SIRA”</p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also:  <a href="https://www.ncsc.gov.uk/articles/about-certified-professional-scheme">https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</a></p>
<p>“Senior Information Risk Owner”  “SIRO”</p>	<p>the Senior Information Risk Owner (SIRO) responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arm’s length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties.</p>
<p>“SPF”  “HMG Security Policy Framework”</p>	<p>the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.  <a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a></p>
<p>"Supplier Staff"</p>	<p>all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier’s obligations under the Contract.</p>

## 2. Operative Provisions



- 2.1. The Supplier shall be aware of and comply the relevant [HMG security policy framework](#), [NCSC guidelines](#) and where applicable Departmental Security Standards which include but are not constrained to the following paragraphs.
- 2.2. (Where the Supplier will provide products or Services or otherwise handle information at OFFICIAL for the Buyer, the requirements of [Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification](#) - [Action Note 09/14](#) dated 25 May 2016, or any subsequent updated document, are mandated, namely that “contractors supplying products or services to HMG shall have achieved, and will be expected to retain Cyber Essentials certification at the appropriate level for the duration of the contract”. The certification scope shall be relevant to the Services supplied to, or on behalf of, the Buyer.
- (Where paragraph 2.2 above has not been met, the Supplier shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the Services supplied to, or on behalf of, the Buyer. The scope of certification and the statement of applicability must be acceptable, following review, to the Buyer, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 2.3. The Supplier shall follow the UK Government Security Classification Policy (GSCP) in respect of any Buyer’s Data being handled in the course of providing the Services and will handle all data in accordance with its security classification. (In the event where the Supplier has an existing Protective Marking Scheme then the Supplier may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Buyer’s Data).
- 2.4. Buyer’s Data being handled in the course of providing an ICT solution or service must be separated from all other data on the Supplier’s or sub-contractor’s own IT equipment to protect the Buyer’s Data and enable the data to be identified and securely deleted when required in line with paragraph 2.14.
- 2.5. The Supplier shall have in place and maintain physical security to premises and sensitive areas in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access), CCTV, alarm systems, etc.
- 2.6. The Supplier shall have in place and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Buyer’s Data. This policy should include appropriate segregation of duties and if applicable role based access controls (RBAC). User credentials that give access to Buyer’s Data or systems shall be considered to be sensitive data and must be protected accordingly.
- 2.7. The Supplier shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Buyer’s Data, including but not limited to:
- physical security controls;
  - good industry standard policies and processes;
  - malware protection;
  - boundary access controls including firewalls, application gateways, etc;
  - maintenance and use of fully supported software packages in accordance with vendor recommendations;
  - use of secure device configuration and builds;

- software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
  - user identity and access controls, including the use of multi-factor authentication for sensitive data and privileged account accesses;
  - any services provided to the department must capture audit logs for security events in an electronic format at the application, service and system level to meet the department's logging and auditing requirements, plus logs shall be:
    - retained and protected from tampering for a minimum period of six months;
    - made available to the department on request.
- 2.8. The Supplier shall ensure that any Buyer's Data (including email) transmitted over any public network (including the Internet, mobile networks or unprotected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 2.9. The Supplier shall ensure that any Buyer's Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Buyer except where the Buyer has given its prior written consent to an alternative arrangement.
- 2.10. The Supplier shall ensure that any device which is used to process Buyer's Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eud-overview/eud-security-principles>.
- 2.11. Whilst in the Supplier's care all removable media and hardcopy paper documents containing Buyer's Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.

The term 'lock and key' is defined as: "securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user's sole control and to which they hold the keys".

- 2.12. When necessary to hand carry removable media and/or hardcopy paper documents containing Buyer's Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This paragraph shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 2.13. The term 'under cover' means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when outside official premises or buildings. In the event of termination of Contract due to expiry, as a result of an Insolvency Event or for breach by the Supplier, all information assets provided, created or resulting from provision of the Services shall not be considered as the Supplier's assets and must be returned to the Buyer and written assurance obtained from an appropriate officer of the Supplier that these assets regardless of location and format have been fully sanitised throughout the Supplier's organisation in line with paragraph 2.15.
- 2.14. In the event of termination, equipment failure or obsolescence, all Buyer's Data and Buyer's Information, in either hardcopy or electronic format, that is physically held or logically stored by the Supplier must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC-approved product or method.
- 2.15. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area Network (SAN) or on shared backup tapes, then the Supplier shall protect (and ensure that any sub-contractor protects) the Buyer's Information and Buyer's Data until such time, which may be long after termination or expiry of the Contract, when it can be securely cleansed or destroyed. Evidence of secure destruction will be required in all cases. Access by Supplier Staff to Buyer's Data, including user credentials, shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Buyer. All Supplier Staff must complete this process before access to Buyer's Data is permitted. [Any Supplier Staff who will be in contact with children or vulnerable adults must, in addition to any security clearance, have successfully undergone an Enhanced DBS (Disclosure and Barring Service) check prior to any contact].
- 2.16. (All Supplier Staff who handle Buyer's Data shall have annual awareness training in protecting information. Notwithstanding any other provisions as to business continuity and disaster recovery in the Contract, the Supplier shall, as a minimum, have in place robust business continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the Contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the Services delivered. If an ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant business continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Supplier has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.

- 2.17. Any suspected or actual breach of the confidentiality, integrity or availability of Buyer's Data, including user credentials, used or handled in the course of providing the Services shall be recorded as an incident. This includes any non-compliance with the Departmental Security Standards and these provisions, or other security standards pertaining to the solution.

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

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

- 2.18. Incidents shall be investigated by the Supplier with outcomes being notified to the Buyer. The Supplier shall ensure that any IT systems and hosting environments that are used to handle, store or process Buyer's Data shall be subject to independent IT Health Checks (ITHC) using an NCSC CHECK Scheme ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the Services being provided are to be shared with the Buyer and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 2.19. The Supplier or sub-contractors providing the Services will provide the Buyer with full details of any actual or future intent to develop, manage, support, process or store Buyer's Data outside of the UK mainland. The Supplier or sub-contractor shall not go ahead with any such proposal without the prior written agreement from the Buyer.
- 2.20. The Buyer reserves the right to audit the Supplier or sub-contractors providing the Services within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the Services being supplied and the Supplier's, and any sub-contractors', compliance with the paragraphs contained in this Schedule.

- 2.21. The Supplier and sub -contractors shall undergo appropriate security assurance activities and shall provide appropriate evidence including the production of the necessary security documentation as determined by the Buyer. This will include obtaining any necessary professional security resources required to support the Supplier's and sub-contractor's security assurance activities such as: a Security and Information Risk Advisor (SIRA) certified to NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Cyber Professional (CCP) schemes. Where the Supplier is delivering an ICT solution to the Buyer they shall design and deliver solutions and services that are compliant with the HMG Security Policy Framework in conjunction with current NCSC Information Assurance Guidance and Buyer's Policy. The Supplier will provide the Buyer with evidence of compliance for the solutions and services to be delivered. The Buyer's expectation is that the Supplier shall provide written evidence of:
- Compliance with HMG Minimum Cyber Security Standard.
  - Any existing security assurance for the Services to be delivered, such as: ISO/IEC 27001 / 27002 or an equivalent industry level certification.
  - Any existing HMG security accreditations or assurance that are still valid including: details of the awarding body; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement.
  - Documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Supplier shall provide details of who the awarding body or organisation will be and date expected.
- 2.22. The Supplier shall contractually enforce all the Departmental Security Standards and these provisions onto any third-party suppliers, sub-contractors or partners who could potentially access Buyer's Data in the course of providing the Services.

## **Schedule 11 – Data processing**

### **Status of the Controller**

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA. A Party may act as:
  - (a) “Controller” in respect of the other Party who is “Processor”;
  - (b) “Processor” in respect of the other Party who is “Controller”;
  - (c) “Joint Controller” with the other Party;
  - (d) “Independent Controller” of the Personal Data where there other Party is also “Controller”,  
  
in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

### **Where one Party is Controller and the other Party its Processor**

2. Where a Party is a Processor, the only processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.
3. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
4. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged Processing and the purpose of the Processing;
  - (b) an assessment of the necessity and proportionality of the Processing in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
5. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
  - (a) Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it

is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;

- (b) ensure that it has in place Protective Measures, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this Schedule 11 and Clause 31 (*Data protection Legislation*),;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound,

uses its best endeavours to assist the Controller in meeting its obligations); and

- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
6. Subject to paragraph 7 of this Schedule 11, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
7. The Processor's obligation to notify under paragraph 6 of this Schedule 11 shall include the provision of further information to the Controller in phases, as details become available.
8. Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6 of this Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event; and/or



- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 9. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this t Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - (a) the Controller determines that the Processing is not occasional;
  - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 10. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 11. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 12. Before allowing any Sub-processor to Process any Personal Data related to the Contract, the Processor must:
  - (a) notify the Controller in writing of the intended Subprocessor and Processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Subprocessor which give effect to the terms set out in this Schedule 11 such that they apply to the Subprocessor; and
  - (d) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 13. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- 14. The Relevant Authority may, at any time on not less than 30 Working Days' notice, revise this Schedule 11 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 the Contract).
- 15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Relevant Authority may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **Where the Parties are Joint Controllers of Personal Data**

16. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 2 to this Joint Schedule 11 (*Processing Data*).

## **Independent Controllers of Personal Data**

17. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
18. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
19. Where a Party has provided Personal Data to the other Party in accordance with paragraph 7 of this Joint Schedule 11 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
20. The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
21. The Parties shall only provide Personal Data to each other:
  - (a) to the extent necessary to perform their respective obligations under the Contract;
  - (b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the GDPR); and
  - (c) where it has recorded it in Annex 1 (*Processing Personal Data*).
22. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
23. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30

GDPR and shall make the record available to the other Party upon reasonable request.

24. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (**"Request Recipient"**):
  - (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - (b) where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
    - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
    - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
25. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
  - (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - (b) implement any measures necessary to restore the security of any compromised Personal Data;
  - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
26. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
27. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).

28. Notwithstanding the general application of paragraphs 2 to 15 of this Schedule 11 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 16 to 27 of this Schedule 11.

## Annex 1 - Processing Personal Data

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

- 1.1 The contact details of the Relevant Authority's Data Protection Officer are: [REDACTED]  
[REDACTED]
- 1.2 The contact details of the Supplier's Data Protection Officer are: [REDACTED]  
[REDACTED]
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

## Schedule 12 – Tenderer’s Response



