



Education  
Funding  
Agency

**EFA Sector Annual Report and Accounts  
Consolidation**

**This contract is made on 9th day of December 2016**

- 1 THE Chief Executive of the Education Funding Agency on behalf of the SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("EFA"); and
- 2 Deloitte LLP, registered in England and Wales under number OC 303675, whose registered office is 2 New Street Square, London, EC4A 3BX (the "Contractor")

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

**It is agreed that:**

1. this contract, together with the attached schedules and annexes, collectively form the "Contract"; and
2. if there is a conflict between the provisions of the clauses of the Contract and the provisions of the schedules, the following order of precedence shall apply:
  - (a) schedule 2 (Terms and Conditions);
  - (b) schedule 1 (Specification);
  - (c) schedules 3 to 9; and
  - (d) schedule 10 (Contractor's Solution).

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

**SIGNED by the CONTRACTOR acting by**

**Authorised Signatory**

**In the presence of**

**Witness signature**

**Occupation**

**Address**

**Date**

**SIGNED by EFA acting by**

**Position**

**in the presence of**

**Witness signature**

**Occupation**

**Address**

**Date**

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## Schedule 1

### The Specification

#### Introduction and Background

The Education Funding Agency (EFA) is an executive agency of the Department for Education (DfE) and since 2012 it was agreed that the EFA would consolidate the spending of academy trusts into the core departmental accounts to the 31<sup>st</sup> March year end. The data used was derived from accounts returns provided by the academy trusts to the 31<sup>st</sup> August year end. This required us to make significant adjustments and the complexity of this process led to an adverse audit opinion on the accounts for 2013-14 and again in 2014-15.

In addition over the last four years, there has been a significant increase in the number of academies. We now have approximately 3,200 academy trusts and this is expected to rise to 11,000 by 2020. This has increased the complexity of the consolidation process.

During 2015 we agreed a new approach with HM Treasury and Parliament:

- a) We would produce a new set of accounts covering the academy sector, the **sector annual report and accounts (SARA)**, based on the accounts produced by each trust on an academic year basis to the 31<sup>st</sup> August each year. This would also subsume the annual report that the department is required to produce on the performance of the sector. The first SARA will be published next summer, covering the academic year to 31<sup>st</sup> August 2016.
- b) The **core departmental accounts** will report only the grant we paid to academies (not their spending). The first accounts on this basis will cover 2016-17 and will be published before the summer recess in 2017 in line with the standard timetable for other departments.
- c) We will put in place arrangements to improve **in-year forecasting** of spend by academies.

We believe that this new approach will strengthen the transparency of the academy sector and our accountability to Parliament in respect of academies, while minimising the administrative burden on individual trusts.

The SARA is subject to audit by the National Audit Office and must conform to the requirements of HM Treasury's Financial Reporting Manual (FReM). In presenting the consolidated SARA, the EFA will need to ensure material compliance with FReM for the academy trusts' business.

The DfE is expected to present the SARA for the academic year ending 31<sup>st</sup> August 2016 (financial year 2015-16) before Parliament in June 2017. To allow this deadline to be achieved the EFA plans to submit its audited SARA to the DfE by 30<sup>th</sup> April 2017.

The EFA currently procures support for the consolidation of the academy trusts' accounts. We will continue to need this support. Therefore, we are inviting bids for a service to support the development of the SARA by consolidating the 2015-16 accounts for approximately 3,200 academy trusts and with a possibility to extend the contract for an increased number of academy trusts in 2016-17.

#### Purpose and Scope

The purpose of this contract is to undertake the collation, validation, consolidation and accounting for approximately 3,200 academy trusts' accounts returns in order to produce the financial statements in the Sector Annual Report and Accounts (SARA) for the academic year 2015-16. This includes the provision of associated technical accounting advice and support. The high level activities included in the scope of these services are:

- (a) Provide accounting services capable of meeting the EFAs' requirements.
- (b) Collate submission of accounts returns from the academy trusts via EFA by mid to end of January 2017. These returns contain both financial and non-financial data.

Due to the expectation that the SARA will be laid before Parliament prior to the summer recess, we are exploring with our working groups the possibility of bringing forward the submission date for accounts returns received from academy trusts, currently 31<sup>st</sup> January. The due date may become 16<sup>th</sup> January 2017 although we are unable to confirm how likely it is that this will be the submission date as yet.

- (c) Follow up on outstanding accounts returns, for approximately 3 weeks after the due date, by direct enquiry with the academy trusts. It is expected that at least 15% of the returns will be outstanding on the due date and will require chasing these academy trusts.
- (d) Automated validation of submitted data and further judgement manual validation by inspection of apparent errors and inconsistencies. This may include contacting the academy trusts to confirm entries and request further information in their returns.
- (e) Verification of information held by the EFA, for example revenue and capital funding, to the accounts returns.
- (f) Post any significant technical accounting entries and other adjustments under the consolidation process as required.
- (g) Substitute the academy trusts' entries for land and buildings with values obtained independently by the EFA.
- (h) Plan and deliver a review and adjustment of balances once aggregated results are available.
- (i) Produce the consolidated extended trial balance and the financial statements in the SARA by the end of March 2017.
- (j) Work as part of the wider project, attending and contributing to various meetings including project meetings, meetings with academy trusts, the DfE and EFA programme boards, internal technical panels and other sector representatives.
- (k) Prepare and submit audit working papers required by the National Audit Office and facilitate the audit process scheduled for early April 2017.
- (l) Programme management for all aspects of the consolidation work with close liaison with EFA and departmental programme management including provision of management information and key performance indicators.
- (m) Provide specialist advice, quality service and guidance to the EFA and the department when required.
- (n) Aggregate information required for the whole of government accounts return collected during the consolidation.

This accountancy services contract will cover the following areas of work.

Requirements	Services and Outcomes
<p><b>1. Accounting Model</b></p> <p>The Contractor will have a suitable accounting model with a defined chart of account structure, capable of consolidating, analysing and adjusting approximately 3,200 academy trusts' accounts returns to generate a consolidated extended trial balance, the financial statements in the SARA and support non-trial balance disclosures.</p> <p>Examples of the current chart of accounts, extended trial balance, accounts return template and the financial statements have been provided in the invitation to tender attachments.</p> <p>The academy trusts' accounts returns will contain both financial and non-financial data for approximately 6,500 academies and therefore the model must be able to store, handle and interrogate large data sets.</p> <p>The EFA will collect the accounts returns from the academy trusts and provide these to the Contractor in either CSV, HTML or XML format.</p> <p><u>Input of academy trusts' accounts returns</u></p> <ul style="list-style-type: none"> <li>EFA will specify with the Contractor the format of the accounts returns (such as CSV, HTML or XML files) and the technical mechanism for delivering the data to the Contractor (such as SFTP).</li> </ul> <p><u>Data Processing</u></p> <ul style="list-style-type: none"> <li>The model must support a chart of accounts capable of conforming to the requirements of the SARA.</li> </ul>	<p>D1.1 An accounting model suitable for consolidating the academy trusts' accounts returns and producing the data required for the SARA as specified by the EFA. This includes mechanisms to allow:</p> <ul style="list-style-type: none"> <li>collation of academy trusts' accounts return data.</li> <li>processing of data according to the specification.</li> <li>provide electronic copies of data and reports for EFA analysis in specified formats (e.g. XML, flat file, etc.).</li> <li>provide 'read only' access to all data for all relevant people as notified by designated representatives of DfE and EFA.</li> <li>provide a clear audit trail (e.g. access, data change etc.).</li> <li>provide appropriate security controls.</li> </ul> <p>D1.2 Chart of accounts suitable to generate the trial balance required by the EFA in Microsoft Excel 2010 or later, including full breakdown to academy trusts</p>

Requirements	Services and Outcomes
<ul style="list-style-type: none"> <li>The model must be able to support the processes listed in the following sections of this requirements document such as indexation calculation, accounting adjustments, validations, data analytics and produce required reports.</li> <li>The model must support workflow and EFA relationship management tools to manage the volume of the data, validation process and adjustments, plus track communication, status and progress of each accounts return.</li> </ul> <p><u>Data and Reporting Output</u></p> <ul style="list-style-type: none"> <li>The model should allow EFA to take copies of the data at various stages (e.g. raw data, data following adjustments etc.), using agreed technical protocols (e.g. SMTP).</li> <li>The Contractor must provide documentation of the data structures (e.g. a data dictionary with documented data structures in XML, HTML or CSV) – to be agreed.</li> <li>The model must produce various output files and reports as required by EFA, including files in Microsoft applications, pdf and flat file format.</li> </ul> <p><u>Model Access</u></p> <ul style="list-style-type: none"> <li>The data must be available to the EFA when required and it must be possible for the Contractor to extract data and run reports.</li> <li>The model should be accessible for read-only access by National Audit Office (NAO) users, when authorised by EFA.</li> <li>The data and reports should be accessible. Refer to link below for further information.  <a href="https://www.gov.uk/service-manual/helping-people-to-use-your-service/making-your-service-accessible-an-introduction">https://www.gov.uk/service-manual/helping-people-to-use-your-service/making-your-service-accessible-an-introduction</a>.</li> </ul>	<p>level.</p> <p>D1.3 Chart of accounts mapped to SARA format.</p> <p>D1.4 Documentation of data structures.</p> <p>D1.5 Detailed audit logs of actions taken throughout the entire process.</p> <p>D1.6 Workflow and EFA relationship management tools.</p> <p>D1.7 A review of the workability and impact of any material process step changes.</p>

Requirements	Services and Outcomes
<p><u>Information Assurance</u></p> <ul style="list-style-type: none"> <li>• The Contractor must conform to the Departmental Security Standard and the Information Commissioner's Office data protection guidelines. The Contractor must provide a Security Plan. See the draft contract for full details. Refer to links below for further information.</li> <li><a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a> and</li> <li><a href="https://ico.org.uk/for-organisations/guide-to-data-protection/">https://ico.org.uk/for-organisations/guide-to-data-protection/</a></li> <li>• The data to be processed/ accessed is classified as OFFICIAL.</li> <li>• The Contractor must provide technical, procedural and personnel controls to provide for the handling of the data.</li> <li>• The model must generate audit logs of actions throughout the entire process.</li> <li>• The model used must be capable of being expanded to cover volume increase of up to 500 new academy trusts and 1,500 new academies per year.</li> <li>• The model used must be sufficiently flexible to be easily and quickly updated for critical changes in policy, accounting standards and the accounts returns.</li> </ul>	
<p><b>2. Data Collection</b></p> <p>The collection process involves the collection and logging of all the returns submitted to the EFA by the academy trusts, including financial statements and management letters. The Contractor is required to monitor receipt of accounts returns and following up on outstanding accounts returns for approximately 3 weeks after the due date.</p>	<p>D2.1 Management information on number of academy trusts that have not submitted accounts returns data to be provided to the EFA on a weekly basis after the initial due date (split by those that have been chased and not chased).</p>

Requirements	Services and Outcomes
<p>The Contractor will be required to:</p> <ul style="list-style-type: none"> <li>• collect returns submitted from the EFA;</li> <li>• log and report the collection of returns; and</li> <li>• chase and collect, for approximately 3 weeks, all returns which have not been submitted by the due date. This includes contacting the academy trusts directly to request submission.</li> </ul> <p>At the end of each week, the Contractor is required to report on all progress to date and escalate issues to the EFA. This may require a receipt tracker reporting on the progress of receipts and chasing activities for the 3 week period following the initial submission deadline. It is expected that at least 15% of the returns will be outstanding on the due date and will require chasing the relevant academy trusts.</p>	
<p><b>3. Data Validation</b></p> <p>The consolidation process will involve receiving accounts returns from the academy trusts containing both financial and non-financial data. These must be authenticated by direct enquiry to the academy trusts if required. Data validation is important to demonstrate the accuracy and completeness of the submitted data, plus provide assurance and confidence that the data is a meaningful reflection of the audited accounts of individual academy trusts. Validations should broadly cover consistency, completeness, reconciliations and reasonableness. The Contractor should define their methodology and approach for ensuring their validation process:</p> <ul style="list-style-type: none"> <li>- adapt existing validations, recommend others (with supporting reasons) and carry out key automated validation tests to provide consistent evaluation of the accuracy and completeness of the returns.</li> </ul>	<p>D3.1 Agreed set of validation rules to be applied during the process.</p> <p>D3.2 List of validation errors and actions taken, including clear audit trail of adjustments posted and unposted.</p> <p>D3.3 Regular report flagging failed valuations and values.</p> <p>D3.4 Extrapolation of part-validated/ unvalidated returns showing the values and potential impact on the consolidated data.</p>

Requirements	Services and Outcomes
<p><u>Current validations published here:</u>  <a href="https://www.gov.uk/government/publications/academies-accounts-returns-validation-tests">https://www.gov.uk/government/publications/academies-accounts-returns-validation-tests</a></p> <ul style="list-style-type: none"> <li>- manage returns collection and perform initial checks on each return to verify format, correctness of standing data and return completeness.</li> <li>- address errors from in-built checks and commentaries on the accounts return forms by direct enquiry with the academy trusts.</li> <li>- review academies transferring in and out of academy trusts during the year to ensure each academy is represented appropriately and verify that transfer in and out balances reported by different academy trusts are consistent and reported in the correct accounting period.</li> <li>- extrapolate and quantify unresolved issues and discuss with the EFA the impact of the combined un-adjusted transactions.</li> <li>- verification to information held by the EFA e.g. on revenue and capital funding.</li> <li>- where required, reconcile data fields in the returns to financial statements and resolve discrepancies.</li> <li>- review reasons for any accounts qualification or where a clean audit was not received, assess the impact on the accounts and flag to the EFA;</li> <li>- further judgemental valuation by inspection of apparent errors and inconsistencies, contacting the relevant academy trusts to confirm entries.</li> <li>- develop and agree with the EFA a clear methodology for validation and thresholds to determine tolerance levels to apply for certain validation tests.</li> <li>- regularly (e.g. weekly) report findings of the validation results to the EFA and agree changes required.</li> <li>- prioritise the relevance and importance of respective validation tests and results, and address accordingly.</li> <li>- proactively manage and constantly monitor the results of validation tests which could lead to an adjustment to the tests.</li> </ul> <p>It is estimated that the Contractor would be required to review approximately 5,000 comments</p>	<p>D3.5 Data validation completion report covering process, findings, outcomes and results, including the impact of adjustments.</p> <p>D3.6 Recommendations to continually improve the process and reduce future validation errors.</p> <p>D3.7 Weekly management reports and progress update showing:</p> <ul style="list-style-type: none"> <li>• number of open validation errors flagged (split between number investigated but not resolved and those not yet investigated).</li> <li>• number of validation errors closed that have not led to an adjustment.</li> <li>• number of validation errors that have been closed and led to an adjustment.</li> </ul>

Requirements	Services and Outcomes
<p>submitted in relation to validation flags. Approximately 3,000 queries will need to be followed up directly with the academy trusts. Approximately 2,000 queries may result in an adjustment.</p> <p><u>Examples of validation themes:</u></p> <ul style="list-style-type: none"> <li>• Opening balance - validate opening balance entries by comparing to closing balances from prior year final data.</li> <li>• Consistency of data – ensure data is consistently represented throughout the accounts returns e.g. depreciation charge in the statement of financial accounts is consistent with the depreciation charge in the Fixed Assets note.</li> <li>• Reasonableness – ensure data inputted is typical and within pre-defined tolerance limits, including a review of comments fields to ensure the response is appropriate.</li> <li>• Agreement with financial statements – figures reconcile to submitted annual accounts data where figures cannot be verified by another inbuilt validation check or where the trust has submitted a comment to explain a validation error (approximately 300 academy trusts).</li> <li>• Missing fields – ensure completeness of the accounts return where if one field is completed, this triggers the expectation that an associated field should also be completed e.g. ensuring the depreciation period is stated for each class of fixed asset disclosed.</li> <li>• Mandatory fields – ensure all mandatory information is included e.g. name of the accounting officer or comments where there is a validation error flagged. Any exceptions to be reported to the EFA.</li> <li>• Others – e.g. <ul style="list-style-type: none"> <li>- explanation for why a bespoke provision has been created that does not fall under one</li> </ul> </li> </ul>	

Requirements	Services and Outcomes
<p>of the expected provision categories for an academy trust.</p> <p>explanation for why an academy within a trust does not have any direct employees.</p>	
<p><b>4. Accounting Adjustments</b></p> <p>In preparing the SARA, several material adjustments are required. Contractors must apply their methodology and approach for working jointly with the EFA/ DfE teams and other third party organisations to agree accounting treatments and adjustments including but not limited to:</p> <ul style="list-style-type: none"> <li>- Financial Reporting Manual (FRoM) compliance. <a href="https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/15.16-FRoM.pdf">https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/15.16-FRoM.pdf</a></li> <li>- Land and Buildings: account for the value of the academy trusts' land and buildings using third party valuations provided by the EFA.</li> <li>- Land and buildings recognition in conformity to SARA accounting policy.</li> <li>- Accounting adjustments for assets under construction (AUC) using information provided by the EFA. This also includes checks to eliminate potential double count of assets between AUC and land and buildings.</li> <li>- Accounting for additions and disposals of assets.</li> <li>- Other capital adjustments e.g. depreciation.</li> <li>- Indexation: to adjust the value of land and buildings to reflect the current market value. (Useful links: <a href="http://www.acadata.co.uk/acadHousePrices.php">http://www.acadata.co.uk/acadHousePrices.php</a>   <a href="https://www.ons.gov.uk/businessindustryandtrade/constructionindustry">https://www.ons.gov.uk/businessindustryandtrade/constructionindustry</a>)</li> <li>- Capital and revenue grants recorded and recognised in the correct period, and reconciled to EFA and other DfE Group bodies' records.</li> <li>- Comparative/ opening balances: reconcile and adjust opening balances where required e.g. to adjust balances for prior year non-returners submitting current year returns (approximately 60 academy trusts); agree opening to prior year closing balances on the balance sheet; prior year audit adjustments.</li> <li>- Process estimates for current year non-returners (approximately 100 academy trusts);</li> <li>- Other consolidation adjustments as required such as alignment of assets/ liabilities/</li> </ul>	<p>D4.1 Data adjustment completion report covering process, findings, outcomes and results.</p> <p>D4.2 Provide reconciliation, notes and working papers showing the details of each adjustment and the impact on the SARA.</p> <p>D4.3 Report showing full audit trail of changes including date, time and people.</p> <p>D4.4 Summary of any unposted entries showing the consolidated values and potential impact on the accounts, with an explanation as to why these entries were not posted.</p> <p>D4.5 Reconciliations e.g.:</p> <ul style="list-style-type: none"> <li>• transfer of academies between academy trusts.</li> <li>• accounts returns opening balances and prior year balances held by EFA.</li> <li>• opening balance adjustment for non-returners.</li> </ul> <p>D4.6 Indexation of land and buildings to 31<sup>st</sup> August including depreciation.</p>

Requirements	Services and Outcomes
<p>reserves transferred on conversion.</p> <p>The Contractor is required to work jointly with the EFA and DfE to understand the implications and impact of accounting policies and changes required particularly establishing the appropriate presentation of these adjustments in the SARA.</p> <p>The Contractors should post all adjustments required in the consolidation process, some at academy level and others at academy trust level. In addition advice and feedback on the scope and nature of the proposed adjustments should be provided.</p> <p>Also the consolidated impact of all unposted entries on the accounts should be clearly presented and discussed.</p>	
<p><b>5. Data Review and Finalisation</b></p> <p>Contractors are required to provide a 'sense check' of the consolidated data, trial balance and adjustments posted. The Contractor must set out their methodology, processes and controls for data review which includes but is not limited to:</p> <ul style="list-style-type: none"> <li>- highlighting issues not addressed throughout the process and assessing their materiality impact on the SARA.</li> <li>- review for anomalies and confirm the overall understanding of balances.</li> <li>- use analytical review and ratio analysis to identify material errors, discrepancies, large or unusual figures and material movements.</li> <li>- adjust data where required to ensure the trial balance reflects a fair state of affairs.</li> <li>- report findings and recommendations.</li> </ul>	<p>D5.1 Report setting out the complete process, findings and outcomes.</p> <p>D5.2 Details of final adjustments (posted and unposted) and the impact on the overall accounts, including audit working papers and audit trail.</p> <p>D5.3 Working papers to inform the EFA of required analysis of balances for reporting purposes.</p> <p>D5.4 Reconciliation of balances where differences exist between the consolidated trial balance and EFA/ academy trusts' records e.g. capital and revenue grants.</p>

Requirements	Services and Outcomes
<p><b>6. Project Planning and Strategic Management</b></p> <p>The Contractor is required to work jointly with the EFA to:</p> <ul style="list-style-type: none"> <li>- plan and manage activities in order to meet deliverables and deadlines.</li> <li>- understand and address lessons learned from previous activities.</li> <li>- create and manage a robust risk management strategy aligned to the DfE Financial Reporting Programme, with clear methodology to identify, assess, manage and control uncertainties, risks and issues throughout the project.</li> <li>- create and manage a robust quality management strategy with a complete set of quality standards, procedures and responsibilities to plan and control delivery quality.</li> <li>- define a robust governance and management hierarchy showing approval and review structures.</li> <li>- review the service level agreement including the designated escalation procedures and key performance indicators (KPIs) against target measures which clearly define the means by which the EFA will verify that outputs are delivered against the requirements.</li> <li>- define and agree a robust process for commissioning additional accountancy services including chargeable rates across grades of professionals (should an unforeseeable change or additional professional accountancy services be required during the contract).</li> </ul>	<p>D6.1 A detailed project plan and agreed timetable highlighting key milestones, resource allocation, review points and key activities.</p> <p>D6.2 Risk management and quality assurance strategies.</p> <p>D6.3 Governance, management and control arrangements and structures including contract variations.</p> <p>D6.4 Risk and issues registers.</p> <p>D6.5 Set out the planned processes, activities and principles, including key controls and process flow diagrams.</p>
<p><b>7. Accounting and Process Support and Technical Advice</b></p> <p>The Contractor is required to have a clear approach for providing professional expert advice and guidance as required to support the completion of the SARA. This includes but is not limited to:</p> <ul style="list-style-type: none"> <li>- provide accounting advice to ensure the SARA is Financial Reporting Manual (FRM) compliant. <a href="https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/1516-FReM.pdf">https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/1516-FReM.pdf</a></li> <li>- provide advice and support on technical accounting, including but not limited to capital adjustments, and input relevant technical accounting views when issues arise.</li> </ul>	<p>D7.1 Informed advice on relevant technical accounting treatments and adjustments.</p> <p>D7.2 Weekly feedback of any proposed changes to the EFA master list of academy trusts' records based on the submitted data and other findings.</p> <p>D7.3 Attendance and contribution to papers for the</p>

Requirements	Services and Outcomes
<ul style="list-style-type: none"> <li>- joint working with EFA to maintain the dynamic master list of the academy trusts and academies populations (a large repository of all the statutory information held for academy trusts and academies). The master list of academy trusts can be found on: <a href="http://www.education.gov.uk/edubase/home.xhtml">http://www.education.gov.uk/edubase/home.xhtml</a></li> <li>- develop and maintain a process to keep track of progress per academy, containing the necessary information needed to manage and complete the process, plus monitor updates using for example workflow and EFA relationship management tools.</li> <li>- agree and document processes, activities and principles with the EFA before starting the consolidation.</li> <li>- set and agree the materiality threshold with the EFA and methodology for adjustments.</li> <li>- attend and contribute to internal DfE technical panel meetings and papers.</li> </ul>	<p>internal DfE technical panel meetings.</p> <p>D7.4 Qualitative and quantitative reports outlining the status, process and outcomes at the various stages.</p> <p>D7.5 Detailed process for commissioning additional accountancy professional services or accountancy capacity to meet unforeseen ad hoc demands. This should include details of fixed chargeable rates and options for discounted rates.</p> <p>D7.6 Procedure to track and monitor progress and communications within an agreed timeframe.</p>
<p><b>8. Production of the completed extended trial balance, the financial statements and other reports.</b></p> <p>The production of the SARA is a statutory duty for the EFA. In order to achieve this, the adjusted consolidated academy trusts' accounts returns must be materially accurate and available on time.</p> <p>Analytics to explain large or unusual movements across reporting years or asset/ liability balances must be carried out by the Contractor.</p> <p>The Contractor should handover the consolidated trial balance, the financial statements, the complete accounts returns data set and other data sets specified by EFA within set timescales.</p>	<p>D8.1 A Microsoft Excel version of the consolidated balanced extended trial balance showing the impact of each adjustment, with associated notes and appropriate working papers.</p> <p>D8.2 The financial statements section of the SARA in the format specified by the EFA.</p> <p>D8.3 Trial balance mapping to the accounts captions in the SARA.</p>

Requirements	Services and Outcomes
	<p>D8.4 System reports showing full audit trail, including:</p> <ul style="list-style-type: none"> <li>- validation adjustments</li> <li>- accounting adjustments</li> <li>- other adjustments</li> </ul> <p>D8.5 Other consolidated financial and non-financial data collected in the accounts returns.</p> <p>D8.6 Flat file of all the data at the academy and academy trust levels.</p>
<p><b>9. Management and Benchmarking Information</b></p> <p>The Contractor is required to provide:</p> <ul style="list-style-type: none"> <li>- aggregated benchmarking data collected from academy trusts. An example of DfE final output incorporating data collected can be found here: <a href="https://www.gov.uk/government/statistics/income-and-expenditure-in-academies-in-england-2014-to-2015">https://www.gov.uk/government/statistics/income-and-expenditure-in-academies-in-england-2014-to-2015</a></li> <li>- management information (MI) and statistics required by the EFA including but not limited to: <ul style="list-style-type: none"> <li>o returns received, rejected and outstanding submissions</li> <li>o number and types of validation errors (new, resolved, outstanding)</li> <li>o risks and issues</li> <li>o master list data changes</li> <li>o results of the validation tests</li> <li>o outstanding validations and associated risks</li> <li>o unmatched transfer of academies with their associated data between academy trusts</li> <li>o financial handbook breaches (if known)</li> </ul> </li> <li>- performance against defined key performance indicators (KPIs) and service level</li> </ul>	<p>D9.1 Benchmarking information and reports.</p> <p>D9.2 Management information on validation progress to support the directors of the Programme Board.</p> <p>D9.3 Management information and statistics as specified by the EFA e.g. weekly highlight report outlining progress and outstanding items, flagging risks and issues.</p> <p>D9.4 Access to the consolidated data in the form of a trial balance at various stages throughout the process.</p> <p>D9.5 Information to support the production of the</p>

Requirements	Services and Outcomes
<p>agreement (SLA) including but not limited to:</p> <ul style="list-style-type: none"> <li>o Mobilisation of resources.</li> <li>o Achievement against planned information sharing, milestones, targets and deliverable dates.</li> <li>o Set level of accuracy and completeness expected during validation.</li> <li>o Responses to queries.</li> <li>o Escalation of issues.</li> </ul> <p>Full details are included in the draft contract provided as an attachment to the invitation to tender.</p> <ul style="list-style-type: none"> <li>- information required for the Whole of Government Accounts (WGA) including but not limited to: eliminations to be processed as a result of transactions with counter parties that fall under the WGA umbrella, land and building indexation, depreciation to end of March, processing implications of pension scheme valuations obtained independently by the EFA etc.</li> </ul>	<p>WGA submission.</p> <p>D9.6 Monthly KPIs and SLA performance report.</p>
<p><b>10. Audit Support</b></p> <p>The Contractor is required to provide:</p> <ul style="list-style-type: none"> <li>- support the audit process and provide information requested.</li> <li>- provide model access to the National Audit Office.</li> <li>- produce required audit reports and information.</li> <li>- facilitate audit visits and ensure staffs are available to support the audit.</li> <li>- provide guidance on end to end processes and model functions where required.</li> <li>- provide information for control and substantive testing.</li> <li>- address audit queries promptly.</li> </ul>	<p>D10.1 Fully referenced working papers to support NAO's work.</p> <p>D10.2 Complete audit trail for all balances and movements, including details of changes, date, time and action owner.</p> <p>D10.3 Accounting model access, process documentation and training if required.</p> <p>D10.4 Data to support control, substantive and end-to-end testing.</p>

Requirements	Services and Outcomes
<p><b>11. Communication and Stakeholder Engagement</b></p> <p>Active engagement and communication with several internal and external stakeholders such as EFA, National Audit Office and the Academy Trusts are imperative to ensure a smooth and transparent process. This includes but is not limited to:</p> <ul style="list-style-type: none"> <li>- Define and agree governance for information flow and decision making with EFA and DfE.</li> <li>- Define and manage the stakeholder engagement and communication strategy and plan, jointly with EFA.</li> <li>- Weekly update report and meeting with EFA key personnel to update on progress and explore decisions on issues including recommending feasible solutions.</li> <li>- Escalate issues to EFA such as non-response from academy trusts on queries.</li> <li>- Attendance at steering groups, workshops, technical panels, monthly contract management, monthly project board meetings, fortnightly programme review group and others.</li> <li>- Escalate potential audit and other issues promptly.</li> <li>- Process of managing and recording communication with stakeholders.</li> <li>- Inform academy trusts of all changes made to their returns with supporting reasons.</li> <li>- Attend and contribute to various meetings, workshops and papers.</li> </ul>	<p>D11.1 Stakeholder and communication strategy, map, methodology, approach and plan.</p> <p>D11.2 Feedback reports to all academy trusts, including where no issues have been found.</p> <p>D11.3 Designated points of contact throughout the process.</p> <p>D11.4 Periodic teleconferences throughout the consolidation process with key stakeholders.</p> <p>D11.5 Attend and/ or contribute to various meetings and papers including but not limited to:</p> <ul style="list-style-type: none"> <li>- monthly Programme Boards</li> <li>- monthly contract meetings</li> <li>- fortnightly Programme Review Group</li> <li>- weekly 'check-in' meetings</li> <li>- various operational meetings.</li> </ul>
<p><b>12. Exit Management</b></p> <p>Should the EFA require a continuation of all or any of the services at the end of the term, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the EFA and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational</p>	<p>D12.1 Complete documentation of the process, findings, outcome and results providing assurance of the completeness and material accuracy of the consolidated results.</p>

Requirements	Services and Outcomes
<p>requirements.</p> <p>This requires a structured and effective hand over of data, full audit working papers and knowledge transfer at the end of the contract. The Contractor should clearly define their planned process/ strategy to ensure a smooth exit of services at the end of the contract term.</p>	<p>D12.2 Transfer of all data and relevant processes.</p> <p>D12.3 Lessons learned log.</p>
<p><b>13. Price</b></p> <p>Contractors are required to set out in detail their costs for the services including but not limited to:</p> <ul style="list-style-type: none"> <li>- how cost relates to their resource mobilisation plan over the term of the contract;</li> <li>- cost in relation to key delivery tasks and their delivery plan; and</li> <li>- all planning assumptions and price which may be subject to variation.</li> </ul>	<p>D13.1 Detailed price breakdown of the services to be provided.</p> <p>D13.2 Price linked to delivery plan and resource to be deployed to deliver the service.</p>

## Schedule 2

### Terms and Conditions

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## 1. DEFINITIONS AND INTERPRETATION

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

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

“**Associated Company**” means any company which is, in relation to another company, its holding company or its subsidiary or a subsidiary of its holding company. “Holding company” and “subsidiary” will have the meanings attributed to them in section 736 and 736A of the Companies Act 1985 and section 1159 of the Companies Act 2006.

“**Background IPR**” means Intellectual Property Rights already existing and owned by the EFA or Contractor or third parties that are created otherwise than pursuant to provision of the Services;

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

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

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

“**Commercially Sensitive Information**” means the information set out in schedule 1:

- (a) which is provided by the Contractor to EFA in confidence for the period set out in schedule 9; and/or
- (b) which constitutes a trade secret.

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

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

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

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

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

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

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

“**Contractor Equipment**” means the Contractor’s ICT equipment.

**“Contractor’s Solution”** means the Contractor’s proposal submitted in response to the EFA’s invitation to tender attached at schedule 10.

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

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

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

**“Deed of Adherence”** means a deed under which a new Consortium Member shall covenant with the other Consortium Members to adhere to the terms of the Consortium Agreement in either the form set out in schedule 10 or in any other form approved by EFA in writing.

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

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

**“EFA Security Standards”** means the security standards as set out in schedule 8.

**“EFA Trade Marks”** means proprietary trade mark rights of EFA including those notified to the Contractor by EFA from time to time.

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

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

**“DPA”** means the Data Protection Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice published by the Information Commissioner or relevant government department in relation to such legislation.

**“Effective Date”** means **9 December 2016**.

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

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

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

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

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

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

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

**“General Anti-Abuse Rule”** means:

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

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

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

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

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

**“Implementation Plan”** means the plan and time schedule for the completion of the obligations of the Contractor under the Contract as set out in schedule 5 as the same may be replaced by any subsequent more detailed plan and time schedule as the Parties may agree in writing from time to time.

**“Initial Term”** means the period one year from the Effective Date.

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

**“IP Materials”** means any materials used or developed for the purposes of the Contract including any programme materials, guidance, papers and research data, results, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs.

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

**“Key Personnel”** means any of the Personnel identified as such in schedule 7 or otherwise identified as such by EFA pursuant to clause 6.

**“Key Sub-Contractor”** means any Sub-Contractor identified as such in schedule 7 or otherwise identified as such by EFA.

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

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses 9, 10, 12, 15, 17 and 33 and in schedule 8.

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

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

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

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

**“Prohibited Act”** means:

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

**“Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

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

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

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

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

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

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

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

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

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

**“Services Commencement Date”** means the Effective Date.

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

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

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

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

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

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

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

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

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

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

**"Treaties"** means the TFEU and the Treaty on European Union.

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

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

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

1.2.1 references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract which are in force prior to the date of the Contract;

1.2.2 the expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;

1.2.3 the words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context;

1.2.4 the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;

1.2.5 any reference in the Contract to a clause or schedule is a reference to a clause or schedule of the Contract and references in any schedule to paragraphs relate to the paragraphs in that schedule;

1.2.6 the clause headings are included for convenience only and shall not affect the interpretation of the Contract; and

1.2.7 the schedules and appendices form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules.

## **2. TERM**

2.1 The Contract commences on the Effective Date and, subject to any provision of this Contract for earlier termination, or extension set out in this clause 2, will terminate at the end of the Initial Term.

2.2 EFA may extend the Initial Term for such further period of up to 12 months at its sole discretion, by giving not less than 2 months' written notice to the Contractor prior to the expiry of the Initial Term.

## **3. THE SERVICES**

3.1 The Contractor shall provide the Services in the Area in accordance with the Specification and undertake and be responsible for all obligations of the Contractor in respect of the Services.

3.2 The EFA may appoint other Contractors for the Services in the Area.

3.3 The Contractor shall, in performing its obligations under the Contract:

3.3.1 conform to the requirements of the Specification and the Contractor's Solution or as otherwise agreed in writing between the Parties;

3.3.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the EFA specified by the EFA from time to time;

- 3.3.3 comply with Good Industry Practice;
  - 3.3.4 ensure that the Services are provided by competent and appropriately trained personnel;
  - 3.3.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
  - 3.3.6 comply with the KPIs, Service Levels and Service Credit requirements set out in schedule 4;
  - 3.3.7 comply with the Implementation Plan;
  - 3.3.8 in so far as is reasonably practicable, comply with any policies and procedures adopted by the EFA from time to time within 14 days of the same being brought to the attention of the Contractor by the EFA;
  - 3.3.9 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
  - 3.3.10 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of the EFA, the Service Users and all other persons including members of the public; and
  - 3.3.11 comply with all safety, security, acceptable use and other policies of the EFA from time to time notified to it and procure that the Personnel also comply.
- 3.4 The EFA may provide data and materials to the Contractor and access to systems for the purposes of providing the Services that the Contractor may use but only to the extent necessary to enable the Contractor to provide the Services.
- 3.5 All equipment and other property brought onto EFA Premises shall be at the Contractor's own risk and the EFA shall have no liability for any loss of or damage to any such equipment and property unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence of the EFA.
- 3.6 Any land or EFA Premises made available from time to time to the Contractor by the EFA in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or EFA Premises as a licensee and shall vacate the same on completion, termination or abandonment of the Contract or the task in respect of which such land or EFA Premises was made available.
- 3.7 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or any of the Personnel and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the EFA retains the right at any time to use any EFA Premises in any manner.

#### **4. CONSORTIA**

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

4.3.3 a copy of the Deed of Adherence has been given to the EFA.

4.4 The Contractor shall promptly inform the EFA if and how any Consortium Member breaches the terms of the Consortium Agreement.

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

5.1 Save as set out in this clause 5 the Contractor may not sub-contract, assign, transfer, charge the benefit and/or delegate the burden of the whole or any part of the Contract (a "Transfer") without the prior written consent of the EFA.

5.2 If the EFA consents to a Transfer the Contractor will evidence the Transfer in writing and provide a copy of the Transfer document on request.

5.3 The Contractor may award Sub-Contracts with a value per annum not exceeding £10,000 without the EFA's consent.

5.4 Where the EFA has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of the EFA, be sent by the Contractor to the EFA as soon as reasonably practicable.

5.5 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the EFA's prior written consent.

5.6 The EFA may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the EFA's right of termination pursuant to clause 23 unless the Sub-Contractor can remedy the breach to the EFA's satisfaction within 21 days of receipt by the Contractor of written notice from the EFA requiring the Sub-Contract to be terminated.

5.7 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.

5.8 If the EFA believes there are:

5.8.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or

5.8.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the EFA may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.

5.9 The Contractor may chose, should they wish, to use resources on a flexible basis where individuals are employed by the Contractor on short term contracts. While not employed as FTEs, the Contractor confirms that they are engaged on standard Contractor terms and conditions, will be under the Contractor's instruction at all time. As such, the Contractor will remain responsible for such resources. The Contractor and EFA agree that these individuals will not be deemed "Sub-Contractors" under the definition of the contract.

## **6. PERSONNEL**

6.1 The EFA may refuse admission to EFA Premises and/or direct the Contractor to end the involvement in the Services of any Personnel whom the EFA believes is a security risk.

6.2 If the EFA require the removal of any Personnel pursuant to clause 8.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor's cost.

6.3 The Contractor shall use its reasonable endeavours to ensure continuity of Personnel and to ensure that the turnover rate of Personnel is at least as good as the prevailing industry norm for similar services, locations and environments.

6.4 The Contractor shall ensure that no person who discloses a Relevant Conviction or who is found to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service Procedures or otherwise), is employed or engaged in providing the Services without the EFA's prior written consent.

- 6.5 For each of the Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the EFA owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the Contractor shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.
- 6.6 The Contractor acknowledges that Key Personnel and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Personnel and Key Sub-Contractors listed in schedule 7 as at the Effective Date.
- 6.7 Key Personnel shall not be released from supplying the Services without the EFA's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 6.8 Any replacements of Key Personnel shall be subject to EFA consent and shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.9 The EFA shall not unreasonably withhold consent under clauses 6.7 or 6.8. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Personnel or Key Sub-Contractors.
- 6.10 EFA may require the Contractor to remove any Key Personnel who the EFA considers in any respect unsatisfactory.
- 6.11 The EFA shall not be liable for the cost of replacing any Key Personnel and the Contractor shall indemnify the EFA against all Employment Liabilities that may arise in this respect.
- 6.12 Except in respect of any transfer of staff under TUPE, for the Term and for 12 months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any staff of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent Contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at staff of the other Party.

## **7. TUPE**

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

(together the “TUPE Information”).

- 7.2 At intervals determined by the EFA (which shall not be more frequent than once every 30 days) the Contractor shall give the EFA updated TUPE Information.
- 7.3 Each time the Contractor supplies TUPE Information to the EFA it shall warrant its completeness and accuracy and the EFA may assign the benefit of this warranty to any Replacement Contractor.
- 7.4 The EFA may use TUPE Information for the purposes of any retendering process.
- 7.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the EFA, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:
  - 7.5.1 the provision of TUPE Information;
  - 7.5.2 any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;
  - 7.5.3 any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the EFA or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
  - 7.5.4 any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
  - 7.5.5 any claim by any person who is transferred by the Contractor to the EFA and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- 7.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the EFA and provide the EFA with up to date TUPE Information.
- 7.7 This clause 7 applies during the Term and indefinitely thereafter.
- 7.8 The Contractor undertakes to the EFA 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 EFA (such approval not to be unreasonably withheld or delayed):
  - 7.8.1 amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
  - 7.8.2 terminate or give notice to terminate the employment or engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
  - 7.8.3 transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the

Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or

- 7.8.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

## 8. CHARGES

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the EFA for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 8.2 In consideration for the provision of the Services the EFA shall pay the Charges in accordance with the schedule 3 subject to the receipt of correct invoices pursuant to clause 8.7 being issued by the Contractor.
- 8.3 Except where otherwise expressly stated in schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Term.
- 8.4 The Charges are exclusive of Value Added Tax (“VAT”) and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the EFA of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 8.5 Payment of the Charges by the EFA shall be without prejudice to any rights the EFA may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the EFA by reason of such payment.
- 8.6 The EFA may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 8.7 Invoices shall be submitted to [AccountsPayable.EFAFINANCE@education.gov.uk](mailto:AccountsPayable.EFAFINANCE@education.gov.uk) quoting the correct EFA purchase order number. An invoice is a “Valid Invoice” if it is legible and includes:
- 8.7.1 the date of the invoice;
  - 8.7.2 Contractor's full name and address;
  - 8.7.3 Contract reference number;
  - 8.7.4 the charging period;
  - 8.7.5 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
  - 8.7.6 days and times worked (if applicable);
  - 8.7.7 Service Credits (if applicable); and
  - 8.7.8 VAT if applicable.
- 8.8 The EFA shall not pay an invoice which is not a Valid Invoice.
- 8.9 The EFA intends to pay Valid Invoices within 10 days of receipt. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause 8.9 is a substantial remedy for late payment of any sum payable

under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

- 8.10 The EFA shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.11 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the EFA. The final invoice shall be submitted not later than 30 days after the end of the Term.
- 8.12 The EFA shall not be obliged to pay the final invoice until the Contractor has carried out all of the Service.
- 8.13 The Contractor shall ensure that a term is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- 8.14 If the EFA disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within 10 Business Days notify the Contractor of the reasons for disputing the invoice. The EFA may withhold the disputed amount pending resolution of the dispute.
- 8.15 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 36.

## **9. TAX and VAT**

- 9.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under the Contract it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- 9.2 If the Services are liable for VAT the Contractor shall comply with HMRC rules and regulations. The Contractor will be liable for paying to HMRC any identified VAT including those which may fall due.
- 9.3 If the Contractor is liable to NICs in respect of consideration received under the Contract it shall comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- 9.4 The EFA may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it.
- 9.5 A request under clause 9.4 may specify the information which the Contractor must provide and the period within which that information must be provided.
- 9.6 The EFA may terminate this Contract if:
  - 9.6.1 in the case of a request mentioned in clause 9.4 the Contractor:
    - (i) fails to provide information in response to the request within a reasonable time; or
    - (ii) provides information which does not demonstrate either how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it;
  - 9.6.2 it receives information which demonstrates that, if clauses 9.1 to 9.3 apply, the Contractor is not complying with those clauses.
- 9.7 The EFA may supply any information which it receives under clause 9.4 to HMRC.

- 9.8 The Contractor bears sole responsibility for the payment of tax and national insurance contributions due from it in relation to any payments or arrangements made under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract.
- 9.9 The Contractor will account to the appropriate authorities for any applicable income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract. The Contractor shall indemnify EFA against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the Contractor of its obligations under the Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by EFA in connection with any such assessment or claim.
- 9.10 The Contractor authorises the EFA to provide HMRC and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under the Contract whether or not EFA is obliged as a matter of law to comply with such request.
- 9.11 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- 9.11.1 notify the EFA in writing of such fact within 5 Business Days of its occurrence; and
  - 9.11.2 promptly give the EFA:
    - (i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
    - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the EFA may reasonably require.

## **10. PREVENTION OF CORRUPTION**

- 10.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Personnel, have at any time prior to the Effective Date:
- 10.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
  - 10.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 10.2 The Contractor shall not:
- 10.2.1 commit a Prohibited Act; or
  - 10.2.2 do or suffer anything to be done which would cause the EFA or any of its employees, consultants, Contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 10.3 The Contractor shall:
- 10.3.1 and procure that its Sub-Contractors shall, establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - 10.3.2 keep appropriate records of its compliance with its obligations under clause 10.3.2 and make such records available to the EFA on request.
- 10.4 The Contractor shall immediately notify the EFA in writing if it becomes aware of any breach of

clauses 10.1 and/or 10.2, or has reason to believe that it has or any of the Personnel have:

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

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

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

10.5 If the Contractor notifies the EFA pursuant to clause 10.4, the Contractor shall respond promptly to the EFA's enquiries, co-operate with any investigation, and allow the EFA to audit any books, records and any other relevant documentation.

10.6 If the Contractor is in Default under clauses 10.1 and/or 10.2, the EFA may by notice:

10.6.1 require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or

10.6.2 immediately terminate the Contract.

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

## 11. DISCRIMINATION

11.1 The Contractor shall perform its obligations under the Contract in accordance with all applicable equality law.

11.2 The Contractor shall comply with EFA's equality and diversity policy as given to the Contractor from time to time and any other requirements and instructions which the EFA reasonably imposes in connection with any equality obligations imposed on the EFA at any time under equality law.

11.3 The Contractor indemnifies the EFA in full from and against all Employment Liabilities that may arise as a result of any claims brought against the EFA by any of its employees, agents, consultants and Contractors ("EFA Personnel") and/or any of the Personnel where such claim arises from any act or omission of the Personnel in respect of anti-discrimination legislation. The Contractor will also provide all reasonable cooperation, assistance and information as the EFA may request in connection with any investigation by the EFA into any complaint or other grievance received by it from any of the EFA Personnel or Personnel in respect of anti-discrimination legislation which may have arisen from, or been contributed to by, any act or omission of the Contractor or any Personnel.

## 12. INTELLECTUAL PROPERTY

12.1 All Intellectual Property Rights in materials:

12.1.1 furnished to or made available to the Contractor by or on behalf of the EFA (the "EFA IP Materials") shall remain the property of the EFA (save for Copyright and Database Rights which shall remain the property of the Crown); and

12.1.2 prepared by or for the Contractor on behalf of the EFA in connection with the Contract (the "Service Specific IP Materials") shall vest in the EFA (save for Copyright and Database Rights which shall vest in the Crown)(together the "IP Materials"). For the avoidance of doubt, this includes any amendments made by the Contractor to

technology for the purpose of agreement;

- 12.1.3 The Department acknowledges that all Background IPR is and shall at all times remain the property of the Contractor
- 12.1.4 All third parties IP, provided through licences by the Contractor to the EFA shall remain the property of such third party, or the Contractor, depending on any separate agreement in place between them.
- 12.2 The Contractor shall not, and shall ensure that Personnel shall not, use or disclose IP Materials without the EFA's approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.
- 12.3 The Contractor hereby assigns to the EFA or undertakes to procure the assignment to the EFA of all Intellectual Property Rights which may subsist in the Service Specific IP Materials (save for Copyright and Database Rights which it hereby assigns to the Crown or undertakes to procure the assignment of to the Crown). These assignments shall be given with full title guarantee, shall take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service Specific IP Materials and shall include, without limitation, an assignment to the EFA (or the Crown as appropriate) of all rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Contractor shall execute all documents and do all other acts requested by the EFA and necessary to execute and perfect these assignments and to otherwise evidence the EFA's or the Crown's ownership of such rights.
- 12.4 The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright produced by or in connection with the Contract or the performance of the Contract.
- 12.5 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the EFA a non-exclusive licence or, if itself a licensee of those rights, shall grant to the EFA 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 EFA to sub-licence, transfer, novate or assign to a Replacement Contractor. The Contractor shall notify the EFA of any third party Intellectual Property Rights to be used in connection with the Contract prior to their use in connection with the Contract or the creation or development of the Service Specific IP Materials.
- 12.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Contractor shall indemnify and keep indemnified the EFA and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the EFA may suffer or incur as a result of or in connection with any breach of this clause 14, except to the extent that any such claim arises from:
  - 12.6.1 items or materials supplied by the EFA; or
  - 12.6.2 the use of data supplied by the EFA which is not required to be verified by the Contractor under any provision of the Contract.
- 12.7 The EFA shall notify the Contractor in writing of any claim or demand brought against the EFA for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor.
- 12.8 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in materials supplied and/or licensed by the Contractor to the EFA, provided always that the Contractor shall:
  - 12.8.1 consult the EFA on all substantive issues which arise during the conduct of such litigation and negotiations;

- 12.8.2 take due and proper account of the interests and concerns of the EFA; and
- 12.8.3 not settle or compromise any claim without the EFA's prior written consent (not to be unreasonably withheld or delayed).
- 12.9 Notwithstanding clause 12.8. the EFA may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the EFA takes action the Contractor shall at the request of the EFA afford to the Contractor all reasonable assistance to the EFA for the purpose of contesting such claim.
- 12.10 The EFA shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the EFA or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract subject to the Contractor indemnifying the EFA on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- 12.11 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the EFA and, at its own expense and subject to the consent of the EFA (not to be unreasonably withheld or delayed), use reasonable endeavours to:
- 12.11.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 12 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or
- 12.11.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and Services, which are the subject of the alleged infringement, on terms which are acceptable to the EFA.
- 12.12 If the Contractor is unable to comply with clauses 12.11.1 and 12.11.2 within 20 Business Days of receipt of the Contractor's notification the EFA may terminate the Contract with immediate effect by notice in writing.
- 12.13 The Contractor grants to the EFA a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights the Contractor owned or developed prior to the Effective Date or otherwise not in connection with the Contract ("**Contractor IP**") and which the EFA reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided and the use and further development of the IP Materials.
- 12.14 The EFA shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.
- 12.15 If the Contractor is not able to grant to the EFA a licence to use any Contractor IP for any reason, including due to any Intellectual Property Rights that a third party may have in such Contractor IP, the Contractor shall use its reasonable endeavours to:
- 12.15.1 procure that the third party owner of any Intellectual Property Rights that are or that may be used to perform the Contract grants to the EFA a licence on the terms set out in clause 12.13; or
- 12.15.2 if the Contractor is itself a licensee of those rights and is able to do so under the terms of its licence, grant to the EFA a sub-licence on the terms set out in clause 12.13.
- 12.16 The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are or are to be the EFA IP Materials any act or thing which:

- 12.16.1 would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry; or
- 12.16.2 would or might prejudice the right or title of the EFA to any of the EFA IP Materials.
- 12.17 The Contractor shall comply with the EFA's branding guidelines and shall not use any other branding, including its own, other than as set out in the EFA's branding guidelines or as otherwise agreed with the EFA.
- 12.18 When using EFA Trade Marks the Contractor shall observe all reasonable directions given by the EFA from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:
- 12.18.1 adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any EFA Trade Mark, or unfairly competes with any EFA Trade Mark; or
- 12.18.2 apply anywhere in the world to register any trade marks identical to or so nearly resembling any EFA Trade Mark as to be likely to deceive or cause confusion.
- 12.19 Notwithstanding the items listed in clause 12 of this contract, the Contractor and EFA agree to the schedule of ownership of intellectual property as set out in Schedule 11. For the avoidance of doubt, any intellectual property not referred to in the Schedule 11 falls under the provision of clause 12 of this contract.
- 13. DATA, SYSTEMS HANDLING AND SECURITY**
- 13.1 The Parties shall comply with the provisions of schedule 8.
- 14. PUBLICITY AND PROMOTION**
- 14.1 Subject to clause 15.2, without prejudice to the EFA's obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- 14.2 The Contractor shall use reasonable endeavours to ensure its Personnel comply with clause 14.1
- 14.3 Without prejudice to the generality of clauses 12.18 and 14.1, the Contractor shall not itself, and shall procure that Consortium Members shall not, use the EFA's name, brand or EFA Trade Marks or the Personal Data of the EFA to sell, promote, market or publicise the Contractor's other programmes, courses, services or other activities.
- 14.4 Subject to clauses 12 and 15 EFA may disclose, copy and otherwise distribute to the public, including but not limited to, by way of the Open Government Licence, any information arising out of the Services or comprised in any work relating to the Services.
- 15. CONFIDENTIALITY**
- 15.1 Except to the extent set out in this clause 15 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- 15.2 The Contractor hereby gives its consent for the EFA to publish the whole Contract including from time to time agreed changes to the Contract.

- 15.3 The Contractor may only disclose the EFA's Confidential Information to Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that Personnel are aware of and shall comply with these obligations as to confidentiality.
- 15.4 The Contractor shall not, and shall procure that Personnel do not, use any of the EFA's Confidential Information received otherwise than for the purposes of the Contract.
- 15.5 Clause 15.1 shall not apply to the extent that:
- 15.5.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
  - 15.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 15.5.3 such information was obtained from a third party without obligation of confidentiality;
  - 15.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 15.5.5 it is independently developed without access to the other Party's Confidential Information.
- 15.6 Nothing in clause 15 shall prevent the EFA disclosing any Confidential Information obtained from the Contractor:
- 15.6.1 for the purpose of the examination and certification of the EFA's accounts;
  - 15.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the EFA has used its resources;
  - 15.6.3 to any other crown body and the Contractor hereby acknowledges that all government departments receiving such Confidential Information may further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or
  - 15.6.4 to any consultant, Contractor or other person engaged by the EFA provided that in disclosing information under clauses 15.8.3 and 15.8.4 the EFA discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 15.7 Nothing in clauses 15.1 to 15.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- 15.8 The EFA shall endeavour to ensure that any government department, employee, third party or sub-Contractor to whom the EFA's Confidential Information is disclosed pursuant to clause 15.6 is made aware of the EFA's obligations of confidentiality.
- 15.9 If the Contractor does not comply with clauses 15.1 to 15.5 the EFA may terminate the Contract immediately on notice to the Contractor.
- 15.10 The delivery of the Contractor's Services to the EFA is as set out in this Contract, and for the benefit and reliance of EFA only. Other than as stated in clause 15, all work performed by the Contractor is confidential and prepared solely for the EFA's benefit only. The EFA agrees not to refer to, or use the Contractor's name in documents for any purpose unless explicitly agreed with the Contractor in writing first (such agreement not to be unreasonably withheld), disclose them or refer to them in any prospectus or other document, or make them available or

communicate them to any other party. No other party is entitled to rely on the Contractor's work for any purpose whatsoever and thus the Contractor accepts no liability to any other party who is shown or gains access to the outputs of our work. For the avoidance of doubt, both parties to the contract confirm that work that the Contractor performs on behalf of EFA for this contract will be shared with the NAO in their role as the EFA's external auditor, to discharge their responsibility as the EFA's external auditor.

## **16. FREEDOM OF INFORMATION**

- 16.1 The Contractor acknowledges that the EFA is subject to the requirements of the FOIA and the EIR.
- 16.2 The Contractor shall transfer to the EFA all Requests for Information that it receives as soon as practicable and in any event within 2 Business Days of receipt:
- 16.2.1 give the EFA a copy of all Information in its possession or control in the form that the EFA requires within 5 Business Days (or such other period as the EFA may specify) of the EFA's request;
  - 16.2.2 provide all necessary assistance as reasonably requested by the EFA to enable the EFA to comply with its obligations under the FOIA and EIR; and
  - 16.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the EFA.
- 16.3 The EFA shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

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

- 17.1 The Contractor shall comply with the provisions of:
- 17.1.1 the Official Secrets Acts 1911 to 1989; and
  - 17.1.2 section 182 of the Finance Act 1989.

## **18. LIABILITY**

- 18.1 Neither Party excludes or limits its liability (if any) to the other:
- 18.1.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
  - 18.1.2 for personal injury or death resulting from the its negligence;
  - 18.1.3 under section 2(3) Consumer Protection Act 1987;
  - 18.1.4 for its own fraud; or
  - 18.1.5 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.
- 18.2 Subject to clauses 18.1 and 18.3, the Contractor shall indemnify the EFA and keep the EFA indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor or any Personnel on the Premises, including in respect of loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.
- 18.3 The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given

by it in clauses 12 (Intellectual Property) and 9 (Tax).

- 18.4 Subject to clauses 18.1, 18.3 and 18.6, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:
- 18.4.1 for any losses of an indirect or consequential nature;
  - 18.4.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or
  - 18.4.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.
- 18.5 Subject to clauses 18.1 and 18.3, the maximum liability of either Party (including under 18.2) to the other under the Contract, whether in contract, tort (including negligence and wilful misconduct) or otherwise:
- 18.5.1 in respect of damage to property is limited to £1 million in respect of any one incident or series of connected incidents; and
  - 18.5.2 in respect of any claim not covered by clause 18.5.1, is limited in each calendar year in aggregate to 125% of the sum of the Charges payable in that year.
- 18.6 The EFA may recover from the Contractor the following losses incurred by the EFA to the extent they arise as a result of a Default by the Contractor:
- 18.6.1 any additional operational and/or administrative costs and expenses incurred by the EFA, including costs relating to time spent by or on behalf of the EFA in dealing with the consequences of the default;
  - 18.6.2 any wasted expenditure or charges;
  - 18.6.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
  - 18.6.4 any compensation or interest paid to a third party by the EFA. Such losses incurred would need to be agreed by both parties to be directly attributable to Default by the Contractor in delivery of their solution detailed at Schedule 10. Due to the scope of the contract this is, in the agreement of both parties to this contract, regarded as being very unlikely. For the avoidance of doubt, any such losses would be subject to the liability cap in 18.5, which is agreed will apply to the sector in aggregate, and is not a separate cap to this level for each individual Academy Trust, or third party; and
  - 18.6.5 any fine or penalty incurred by the EFA and any costs incurred by the EFA in defending any proceedings which result in such a fine or penalty.
- 18.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 18.8 All property of the Contractor whilst on the EFA's premises shall be there at the risk of the Contractor and the EFA shall accept no liability for any loss or damage howsoever occurring to it.
- 18.9 The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the sum and range of cover as the EFA deems to be appropriate but not less than £5,000,000 for any one claim, for professional indemnity insurances for the sum and range of cover as the EFA deems to be appropriate but not less than £1,000,000 for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of 6

years following the end of the Term.

- 18.10 The Contractor confirms it holds insurance policies providing an adequate level of cover in respect of risks that may be incurred by it, and the Contractor agrees to this in accordance with clause 18.9. The Contractor agrees to share with the EFA their certificates of insurance by way of evidence of compliance with this clause 18.10.
- 18.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 18.12 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.
- 18.13 The Contractor will not be liable for losses arising as a result of the provision of false, misleading or incomplete information or documentation by, or withholding or concealment or misrepresentation of information or documentation by the EFA or third parties, where this could not have reasonably been identifiable by the Contractor from the information supplied.

## **19. WARRANTIES AND REPRESENTATIONS**

19.1 The Contractor warrants and represents that:

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

- (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

19.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and

19.1.10 it has notified the EFA in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

## **20. FORCE MAJEURE**

20.1 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 20.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.

20.2 If either Party is prevented from performance of its obligations for a continuous period in excess of 3 months, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

20.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use reasonable endeavours to end Force Majeure or to find solutions by which the Contract may be performed despite the Force Majeure.

## **21. MONITORING AND REMEDIATION**

21.1 The EFA or its authorised representatives may visit on reasonable notice to the Contractor any premises of the Contractor, any Consortium Member or any other premises at which the Services (or any part of them) are being or are to be performed to ascertain that the Contractor is conforming in all respects with its obligations arising under the Contract and otherwise to monitor and quality assure the provision of the Services. Such visits which will be reasonably planned in advance and will be confined to the meeting rooms or conference facilities at the premises to ensure the confidentiality of documentation held in other working areas.

21.2 During such visits, the EFA may inspect and take copies of such of the records of the Contractor and any Consortium Member as relate to the performance of their obligations under the Contract.

21.3 If the EFA reasonably considers that any provision of the Contract is at risk of not being complied with it may, notwithstanding and without prejudice to any other right or remedy that it may have under the Contract or otherwise:

21.3.1 require the Contractor to produce a plan of remedial action in order to remedy or remove such risk, which shall be subject to the approval of the EFA (not to be unreasonably withheld) and which, once approved, the Contractor shall implement; and

21.3.2 monitor, supervise, direct and/or guide the Contractor's provision of the Services until the EFA reasonably considers that any such risk has been remedied or removed. The Contractor shall cooperate at all times with the EFA in this regard.

21.4 If the Contractor fails to comply with any provision of the Contract or fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the EFA may instruct the Contractor to remedy the failure and the Contractor

shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 21 days or such other period of time as the EFA may direct.

21.5 The EFA may review from time to time the progress of the Contractor against the Implementation Plan. The Contractor shall cooperate with the EFA in this regard and provide any information and evidence reasonably required by the EFA.

21.6 The EFA may instruct the Contractor to take appropriate remedial action where the EFA reasonably considers that the Implementation Plan is not being complied with or is at risk of not being complied with and the Contractor shall take such remedial action.

## **22. STEP IN RIGHTS**

22.1 Without prejudice to EFA's rights of termination under clause 23 the EFA may exercise one or more of the rights set out in this clause 22 ("**Step In Rights**") if:

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

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

22.1.3 a Regulatory Body has advised the EFA that exercise by the EFA of its rights under this clause 22 is necessary;

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

22.1.5 it is necessary to discharge a statutory duty; or

22.1.6 the Contractor becomes insolvent.

22.2 If the EFA has a Step In Right it may serve notice on the Contractor (a "**Step-In Notice**") that it will take action under this clause 22 either itself or with the assistance of a third party.

22.3 The Step-In Notice shall set out:

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

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

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

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

22.3.5 whether the EFA will require access to the Contractor's premises; and

22.3.6 to the extent practicable, the effect the EFA 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.

22.4 Following service of a Step-In Notice, the EFA shall:

22.4.1 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;

22.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;

22.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the EFA is not assuming control; and

- 22.4.5 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.
- 22.5 For as long as and to the extent that the Required Action continues:
- 22.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
- 22.5.2 the EFA shall pay the Contractor the Charges after subtracting any applicable Service Credits and the EFA's costs of taking the Required Action.
- 22.6 If the Contractor demonstrates to the EFA'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 EFA not taken the Required Action, the EFA may adjust the Charges.
- 22.7 Before ceasing to exercise its Step In Rights the EFA shall deliver a written notice to the Contractor (a "**Step-Out Notice**"), specifying:
- 22.7.1 the Required Action it has taken; and
- 22.7.2 the date on which the EFA plans to end the Required Action subject to the EFA being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 22.8.
- 22.8 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the date specified in clause 22.7.2, develop for the EFA'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.
- 22.9 If the EFA 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 EFA for approval. The EFA shall not withhold or delay its approval of the draft plan unreasonably.
- 22.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 22, provided that the EFA shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-In action taken by the EFA under clauses 22.1.2 to 22.1.5 (insofar as the primary cause of the EFA serving the Step In Notice is identified as not being the result of a Contractor's Default).

## **23. TERMINATION**

- 23.1 The EFA may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
- 23.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- 23.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- 23.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- 23.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

- 23.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - 23.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
  - 23.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 23.1.8 any event similar to those listed in clauses 23.1.1 to 23.1.7 occurs under the law of any other jurisdiction.
- 23.2 The EFA may terminate the Contract with immediate effect by notice and without paying compensation to the Contractor where the Contractor is an individual and:
- 23.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
  - 23.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
  - 23.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
  - 23.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
  - 23.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
  - 23.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
  - 23.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
  - 23.2.8 any event similar to those listed in clauses 23.2.1 to 23.2.7 occurs under the law of any other jurisdiction.
- 23.3 The Contractor shall notify the EFA immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The EFA may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 months of:
- 23.3.1 being notified that a Change of Control has occurred; or
  - 23.3.2 where no notification has been made, the date that the EFA becomes aware of the Change of Control
- but shall not be permitted to terminate where approval was granted prior to the Change of Control.
- 23.4 The EFA may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a partnership and:
- 23.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent

Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;

- 23.4.2 it is for any reason dissolved;
  - 23.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;
  - 23.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets;
  - 23.4.5 the partnership is deemed unable to pay its debts within the meaning of sections 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
  - 23.4.6 any of the following occurs in relation to any of its partners:
    - 23.4.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
    - 23.4.6.2 a petition is presented for his bankruptcy;
    - 23.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or
    - 23.4.6.4 any event similar to those listed in clauses 23.4.1 to 23.4.6 occurs under the law of any other jurisdiction.
- 23.5 The EFA may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a limited liability partnership and:
- 23.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 23.5.2 it is for any reason dissolved;
  - 23.5.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
  - 23.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
  - 23.5.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
  - 23.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets; or
  - 23.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 23.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 23.5.9 any event similar to those listed in clauses 23.5.1 to 23.5.8 occurs under the law of any other jurisdiction.
- 23.6 References to the Insolvency Act 1986 in clause 23.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

- 23.7 The EFA may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
- 23.7.1 the Contractor has not remedied the Default to the satisfaction of the EFA within 21 Business Days or such other period as may be specified by the EFA, after issue of a notice specifying the Default and requesting it to be remedied
  - 23.7.2 the Default is not, in the opinion of the EFA, capable of remedy; or
  - 23.7.3 the Default is a Material Breach.
- 23.8 The EFA may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.8.1 the Contractor's warranty in clause 19.1.10 is materially untrue;
  - 23.8.2 the Contractor commits a material breach of its obligation to notify the EFA of any Occasion of Non-Tax Compliance; or
  - 23.8.3 the Contractor fails to provide details of proposed mitigating factors which, in the EFA's reasonable opinion are acceptable.
- 23.9 The EFA may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.9.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
  - 23.9.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract; or
  - 23.9.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.
- 23.10 If the EFA terminates the Contract under clauses 23.7, 23.8 or 23.9:
- 23.10.1 and makes other arrangements for the supply of the Services, the EFA may recover from the Contractor the cost reasonably incurred of making those other arrangements; and
  - 23.10.2 the EFA shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the EFA), until the EFA has established the final cost of making the other arrangements envisaged under this clause 23.
- 23.11 Either Party may terminate the Contract (or any part of it) at any time by giving at least 3 months' prior written notice to the other Party.
- 23.12 If the EFA terminates the Contract under clause 23.11 the EFA shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the EFA.
- 23.13 If any funding from governmental or other sources for the provision of the Services, or for a programme or a project to which the provision of the Services relates is withdrawn, reallocated or no longer available in such a way that the Contract cannot reasonably continue the EFA may terminate the Contract (or any part of it) by serving 3 months' written notice on the Contractor.
- 23.14 If the EFA terminates the Contract under clause 23.13 the EFA shall pay to the Contractor for

Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs), provided that the Contractor shall use all reasonable endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavailability of such costs.

- 23.15 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the EFA in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 23.16 If the EFA fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the EFA of its failure to pay. If the EFA fails to pay such undisputed sums within 90 Business Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the EFA exercising its rights under clause 8.6 or to Force Majeure.
- 23.17 Save as otherwise expressly provided in the Contract:
- 23.17.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 23.17.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the EFA or the Contractor under clauses 8 (Payment), 9 (Tax and VAT), 10 (Prevention of Fraud), 12 (Intellectual Property Rights), 13 (Data), 15 (Confidentiality), 16 (Freedom of Information), 17 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 180 (Warranties and Representations), 19 (Liability), 23 (Termination) 24 (Retendering and Handover), 25 (Exit Management), 26 (Audit), and 37 (Governing Law and Jurisdiction).
- 23.18 The Contractor may terminate the contract immediately should a major professional conflict of interest, legal, regulatory or breach of professional obligation occur in relation to the purpose of the contract that cannot otherwise be managed.

## **24. RETENDERING AND HANDOVER**

- 24.1 Within 30 days of being requested by the EFA, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable the EFA to issue tender documents for the future provision of replacement services.
- 24.2 The EFA shall take reasonable precautions to ensure that the information referred to in clause 24.1 is given only to potential Contractors who have qualified to tender for the future provision of the replacement services.
- 24.3 The EFA shall require that all potential Contractors treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the EFA; and that they shall not use it for any other purpose.
- 24.4 The Contractor shall allow access to the Premises in the presence of EFA's authorised representative, to any person representing any potential Contractor whom the EFA has selected to tender for the future provision of the Services.
- 24.5 If access is required to the Contractor's Premises for the purposes of clause 26.4, the EFA shall give the Contractor 7 days' notice of a proposed visit together with the names of all persons who will be visiting.
- 24.6 The Contractor shall co-operate fully with the EFA during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports,

summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

- 24.7 Within 10 Business Days of being requested by the EFA, the Contractor shall transfer to the EFA, or any person designated by the EFA, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the EFA.

## **25. EXIT MANAGEMENT**

- 25.1 If the EFA requires a continuation of all or any of the Services at the end of the Term, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the EFA and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- 25.2 The Contractor will, within 2 months of the Effective Date, deliver to the EFA, a plan which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the EFA and/or its Replacement Contractor at the end of the Term (an "Exit Plan").
- 25.3 Within 30 days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 36.
- 25.4 The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update the Contractor will submit the revised Exit Plan to the EFA for review. Within 30 days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within 30 days, such dispute shall be referred to the dispute resolution procedure in clause 36.
- 25.5 If the Contractor:
- 25.5.1 does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Charges; or
  - 25.5.2 reasonably incurs additional costs
- the Parties shall agree a variation of the Charges.
- 25.6 If the EFA requests, the Contractor shall deliver to the EFA details of all licences for software used in the provision of the Services including the software licence agreements.
- 25.7 Within one month of receiving the software licence information described above, the EFA shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the EFA a plan for licence transfer.
- 25.8 The Contractor shall co-operate fully with the EFA in order to enable an efficient and detailed knowledge transfer from the Contractor to the EFA at the end of the Term and shall provide the EFA free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the EFA. The Contractor shall comply with the EFA's request for information no later than 15 Business Days from the date that that request was made.

## **26. AUDIT**

- 26.1 The Contractor shall keep and maintain until 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all Charges.

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

## **27. ENTIRE AGREEMENT**

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

## **28. PARTNERSHIP**

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

## **29. WAIVER**

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

## **30. CHANGE CONTROL**

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

## **31. COUNTERPARTS**

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

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

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

32.4 The Parties may amend the Contract without the consent of any Replacement Contractor.

### **33. CONFLICTS OF INTEREST**

33.1 The Contractor shall:

33.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and

33.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the EFA, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to the EFA under the provisions of the Contract in either case, referred to in this clause 33 as a “Conflict of Interest”.

33.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 33 the Contractor shall forthwith provide full particulars to the EFA.

33.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.

33.4 Without prejudice to the foregoing provisions of this clause 33, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:

33.4.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the EFA (acting reasonably); and

33.4.2 give the EFA a comprehensive and detailed written statement of the action it had taken.

33.5 If the EFA is not satisfied with the Contractor's actions, the Contractor shall, on request by the EFA promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).

33.6 Without prejudice to any other right or remedy it may have, the EFA may terminate the Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the EFA, there is any continuing breach by the Contractor of the provisions of this clause 33.

### **34. FURTHER ASSURANCE**

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

### **35. NOTICES**

35.1 Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, facsimile or e-mail, addressed to the recipient at its registered office or its address (or such other address, facsimile number or e-mail address as may be notified in writing from time to time).

35.2 The notice, demand or communication shall be deemed to have been duly served:

35.2.1 if delivered by hand, when left at the proper address for service;

35.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;

35.2.3 if given or made by facsimile or e-mail, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post or (where being sent to an address in a different country to where posted) airmail to the other Party within 24 hours after transmission and that, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

35.3 If proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.

## **36. DISPUTE RESOLUTION**

36.1 Any Dispute shall be dealt with in accordance with this clause 36.

36.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within 15 days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.

36.3 If a Dispute cannot be resolved by negotiation as referred to in clause 36.2 within 30 days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs.

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

37.1 The Contract and any non-contractual obligations arising out of or connection with it will be governed by and construed in accordance with English Law.

37.2 The courts of England shall have exclusive jurisdiction to settle any dispute which arises out of or in connection with the Contract.

37.3 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.

### **Schedule 3**

#### **Financials**

1. The EFA shall pay the Contractor the Charges in accordance with the Contract, subject to successful delivery of the Services against the KPIs or Service Levels set out in schedule 4. The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise between the Contractor and the EFA, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
2. The EFA may review the detailed costs set out in the Implementation Plan to ensure that the Contract is value for money.
3. Indexation shall not apply to the Charges.
4. The Contractor shall be entitled to invoice the Charges following acceptance by the EFA of satisfactory completion of the Services or, where performance of the Services will continue, either monthly in arrears or on satisfactory completion of milestones as set out in the delivery milestones, outputs or outcomes (as set out in the table below).
5. Two such milestones have been agreed, being the satisfactory completion of the build of the technical solution, and the delivery of the word copy of the year 1 SARA. Agreement to make the payments of funds against these milestones will be made in writing, prior to be included in the relevant monthly invoice.
6. Funds allocated to a particular expenditure heading in Table 1 are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only.
7. The below table represents the indicative monthly costs associated with the proposed delivery of services by the Contractor, as set out in their proposal to EFA dated 8 September 2016. Timing and absolute value of costs may vary should the scope and extent of activity change throughout the course of the contract period. Any such changes will be agreed in writing between the Contractor and EFA, and form part of the monthly cycle of contract management meetings, which will include an ongoing reconciliation to this original set of assumed costs.

Both parties agree that as at the effective date of the contract, there remain a number of areas of the programme that are outstanding, specifically a working online form and method of data transfer. This along with the need for further detail, and agreement on, client responsibilities and amendments in assumptions has affected the timetable of key activities already, causing a variation in service timing. This may also potentially affect the scope.

As noted above the Contractor agrees to work closely with EFA to ensure transparency of the impact of all such EFA decisions and requirements, and any changes in the absolute contract value will be agreed in writing by way of a contract variation before agreement to amend costs being charged to EFA.

**Table 1 – Proposed monthly cost schedule <redacted>**

**Notes:**

- 1. Amounts included above are excluding VAT, and the amounts shown above are based on the scope and timing of the activities as set out in the proposal dated 8 September 2016.
- 2. The total cost in table 1 remains the same as the total cost of £1,415,436 plus VAT as set out in the proposal dated 8 September 2016.
- 3. The "completion" requirements of milestone A and B as noted above will be agreed in writing separately and in line with the KPIs per schedule 4.

#### **Schedule 4**

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

This Schedule will be agreed by the EFA and the Contractor by 9 December 2016. The parties agree to work together in good faith to reach agreement on a KPI, Service Level and Service Credit structure which incentivises required performance in the appropriate service areas. If there are any issues experienced in reaching agreement by the noted date, the matter will be escalated accordingly.

## **Schedule 5**

### **Implementation Plan**

1. The Contractor shall provide the Services in accordance with the Implementation Plan set out below, which is based on the assumptions and EFA responsibilities as set out in the contractor's proposal, dated 8 September 2016.
2. The Implementation Plan shall be sufficiently detailed as is necessary to manage the Services and any proposed changes are subject to the Change Control Procedure.
3. The Contractor shall be responsible for implementing and managing the Services and for taking all such steps as may be necessary so as to ensure that from the Service Commencement Date the Contractor is able to provide the Services:
  - 3.1 in accordance with the provisions of the Contract; and
  - 3.2 in a manner that maintains the continuity of Services to the EFA.
4. The Contractor shall monitor its performance against the Implementation Plan and report to the EFA monthly (or more frequently if so required by the EFA) on its performance.

Implementation Plan -- Per Proposal Dated 8 September 2016 <redacted>

## **Schedule 6**

### **Change Control Procedure**

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

### Change Control Note

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

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

<b>Revised daily rate (if applicable)</b>	
<b>Impact on original contract</b> <b>(if applicable)</b>	
<b>Supporting Information</b> <b>(please attach all supporting documentation for this Change Control)</b>	
<b>Terms and Conditions</b>	Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect.
<b>Variation Agreed</b>	
<b>For the Contractor:</b>	<b>For the EFA:</b>
<b>Signature.....</b>	<b>Signature.....</b>
<b>Full Name.....</b>	<b>Full Name.....</b>
<b>Title.....</b>	<b>Title.....</b>
<b>Date.....</b>	<b>Date.....</b>

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

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

**Schedule 7**

**Key Personnel and Key Sub Contractors**

**Key Personnel**

The individuals listed in the table below are Key Personnel:

<b>Name</b>	<b>Role</b>	<b>Period of Involvement</b>
<redacted>	Engagement Partner	Refer to Initial Term
<redacted>	Engagement Director	Refer to Initial Term

**Key Sub-Contractors**

The Contractor may sub-contract its obligations under the Contract to the Sub-Contractors listed in the table below.

<b>Key Sub-Contractor Name and Address (if not the same as the registered office)</b>	<b>Registered Office and Company Number</b>	<b>Related Product/Service Description</b>	<b>Sub-contract Price expressed as a percentage of total projected Charges over Term</b>	<b>Role in delivery of the Services</b>

## Schedule 8

### Data, Systems Handling and Security

#### Definitions

<b>"BPSS"</b>	means the Government's Baseline Personnel Security Standard for Government employees available at:  <a href="http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200551/HMG_Baseline_Personnel_Security_Standard_V3_2_Apr-2013.pdf">www.gov.uk/government/uploads/system/uploads/attachment_data/file/200551/HMG_Baseline_Personnel_Security_Standard_V3_2_Apr-2013.pdf</a>
<b>"CESG"</b>	is the United Kingdom government's national technical authority for information assurance, details of which can be found at:  <a href="http://www.cesg.gov.uk/Pages/homepage.aspx">http://www.cesg.gov.uk/Pages/homepage.aspx</a>
<b>"CESG IAP" "CESG Information Assurance Policy Portfolio"</b>	means the CESG Information Assurance policy Portfolio containing HMG policy and guidance on the application of 'security assurance' for HMG systems.
<b>"CTAS" "CESG Tailored Assurance"</b>	is an 'information assurance scheme' which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector EFAs procuring IT systems, products and services, ranging from simple software components to national infrastructure networks.
<b>"CPA" "CESG Product Assurance"</b>	is an 'information assurance scheme' which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry.
<b>"CCSC" "CESG Certified Cyber Security Consultancy"</b>	is CESG's approach to assessing the services provided by consultancies and confirming that they meet CESG's standards. This approach builds on the strength of CLAS and certifies the competence of Contractors to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors.
<b>"CCP" "CESG Certified Professional"</b>	is a CESG scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors.
<b>"CC" "Common Criteria"</b>	the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.

<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 "Controls" and "Controlled" are interpreted accordingly;
<b>"Cyber Essentials" "Cyber Essentials Plus"</b>	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.
<b>"EFA Assets"</b>	include but are not limited to EFA premises, IT systems and information with a classification up to confidential;
<b>"EFA Data"</b>	<p>a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and:</p> <p style="margin-left: 40px;">(i) which are supplied to the Contractor by or on behalf of the EFA; or</p> <p style="margin-left: 40px;">(ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or</p> <p>(b) which are any Personal Data for which the EFA is the Data Controller;</p>
<b>"Data Processor", "Personal Data", "Sensitive Personal Data", "Data Subject", "Process", "Processing" and "Data Controller"</b>	shall have the meanings given in the DPA;
<b>"Departmental Security Standards"</b>	means the EFA's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
<b>"Digital Marketplace / GCloud"</b>	the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.
<b>"EEA"</b>	the European Economic Area;
<b>"FIPS 140-2"</b>	this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled 'Security Requirements for Cryptographic Modules'. This document is the de facto security standard used for the accreditation of cryptographic modules.

<p><b>“Good Industry Practice”</b> <b>“Industry Good Practice”</b></p>	<p>means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p><b>“Good Industry Standard”</b> <b>“Industry Good Standard”</b></p>	<p>means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p><b>“GSC”</b> <b>“GSCP”</b></p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>
<p><b>“SPF”</b> <b>“HMG Security Policy Framework”</b></p>	<p>This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.</p>
<p><b>IS5</b></p>	<p>this is HMG Information Assurance Standard No. 5 - Secure Sanitisation issued by CESG</p>
<p><b>“IT Security Health Check”</b> <b>“Penetration Testing”</b></p>	<p>means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.</p>
<p><b>“Need-to-Know”</b></p>	<p>the Need-to-Know principle is 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.</p>
<p><b>“OFFICIAL”</b> <b>“OFFICIAL-SENSITIVE”</b></p>	<p>the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.</p> <p>the ‘OFFICIAL–SENSITIVE’ caveat 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 Government Security Classification Policy.</p>
<p><b>“Security and Information Risk Advisor”</b> <b>“CCP SIRA”</b> <b>“SIRA”</b></p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the CESG Certified Professional Scheme.</p>

**“IT Security Health Check”** means an assessment to identify vulnerabilities in IT systems and networks which may compromise the confidentiality, integrity or availability of information held on that IT system;

**“Malicious Software”** any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

**“Security Plan”** the Contractor's security plan.

1. The EFA is the Data Controller and the Contractor is the Data Processor.
2. Both Parties may handle Personal Data and shall comply with their legal obligations under the DPA.
3. The Contractor shall notify the EFA as soon as it becomes aware of any actual or potential data incident or breach of its obligations under the DPA in relation to any Personal Data processed as a consequence of undertaking the Contract.
4. If the Contractor is processing Personal Data as a Data Processor for the EFA as a consequence of undertaking the Contract the Contractor shall:
  - 4.1 Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Services or as is required by law or any Regulatory Body;
  - 4.2 Process the Personal Data only in accordance with instructions from the EFA (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the EFA to the Contractor during the Term);
  - 4.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - 4.4 take reasonable steps to ensure the reliability of any Personnel who have access to the Personal Data;
  - 4.5 obtain the EFA's prior written consent before transferring Personal Data to any Sub-Contractors or Associated Companies for the provision of the Services;
  - 4.6 ensure that all Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this paragraph 4;
  - 4.7 ensure that no Personnel publish or disclose any Personal Data to any third party unless directed in writing to do so by the EFA;
  - 4.8 notify the EFA within 2 Business Days if it receives:
    - 4.8.1 a request from a Data Subject to have access to that person's Personal Data; or
    - 4.8.2 a complaint or request relating to the EFA's obligations under the DPA;
  - 4.9 provide the EFA with full cooperation and assistance in relation to any complaint or

request made, including by:

- 4.9.1 providing the EFA with full details of the complaint or request;
  - 4.9.2 complying with a data access request within the relevant timescales set out in the DPA and in accordance with the EFA's instructions;
  - 4.9.3 providing the EFA with any Personal Data it holds in relation to a Data Subject (within the timescales required by the EFA); and
  - 4.9.4 providing the EFA with any information requested by the EFA;
- 4.10 permit the EFA or any duly authorised representative of the EFA (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the EFA to enable the EFA to verify and/or procure that the Contractor is in full compliance with its data protection obligations under the Contract;
- 4.11 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the EFA); and
- 4.12 subject to paragraph 5, not Process or otherwise transfer any Personal Data outside the EEA.
5. If, after the Effective Date, the Contractor (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the EEA the Contractor shall:
- 5.1 submit a request for a Variation to the EFA which shall be dealt with in accordance with the Change Control Procedure;
  - 5.2 set out in its request for a Variation:
    - 5.2.1 the Personal Data which will be Processed and/or transferred outside the EEA;
    - 5.2.2 the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the EEA;
    - 5.2.3 any Sub-Contractors or other third parties who will be Processing and/or transferring Personal Data outside the EEA; and
    - 5.2.4 how the Contractor will adequately protect (in accordance with the DPA and in particular so as to ensure the EFA's compliance with the DPA) Personal Data to be Processed and/or transferred outside the EEA.
6. If evaluating the request for a Variation pursuant to paragraph 5:
- 6.1 the Parties shall consider current policies and guidance of the EFA, Government and the Information Commissioner's Office and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the EEA and/or overseas generally; and
  - 6.2 the Contractor shall comply with any instructions which the EFA may notify in writing.
7. Insofar as the Contractor processes Personal Data for its own administrative purposes, whilst undertaking the Contract the Contractor shall comply at all times with the DPA and shall not perform its obligations under the Contract in such a way as to cause the EFA to breach any of its obligations under the DPA.
8. The Contractor shall:

- 8.1 employ appropriate organisational, operational and technological processes and procedures to keep EFA Data safe from unauthorised use or access, loss, destruction, theft or disclosure which comply with ISO/IEC 27001 as appropriate to the Services;
- 8.2 not delete or remove any proprietary notices contained within or relating to EFA Data;
- 8.3 preserve the integrity of EFA Data and prevent the corruption or loss of EFA Data;
- 8.4 ensure that any files containing EFA Data are stored on the Contractor's secure servers and/or secured Contractor Equipment;
- 8.5 ensure that EFA Data relating to the Contract is segregated from other data on its IT systems so that EFA Data can be securely deleted if required;
- 8.6 not keep EFA Data on any Contractor Equipment unless it is protected by being fully encrypted and password protected and its use is necessary for the provision of the Services;
- 8.7 ensure that any hard copy is destroyed by cross-cut shredding and secure re-cycling of the resulting paper waste;
- 8.8 perform secure back-ups of all EFA Data and ensure that up-to-date back-ups are stored off-site. The Contractor shall ensure that such back-ups are available to the EFA at all times upon request;
- 8.9 not store or host EFA Data outside the United Kingdom or perform any ICT management or support without the EFA's prior written consent;
- 8.10 ensure that any EFA Data sent to any third party is:
  - 8.10.1 sent by CD or DVD;
  - 8.10.2 fully encrypted and password protected, with the password for files sent separately from the data;
  - 8.10.3 carried by a secure courier or registered postal service (special delivery) and not by e-mail or on USB pens.
9. If EFA Data is held and/or processed by the Contractor, the Contractor shall supply EFA Data to the EFA as requested and in the format specified by the EFA.
10. If EFA Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the EFA may:
  - 10.1 require the Contractor at the Contractor's expense to restore or procure the restoration of EFAs Data as soon as practicable, and/or
  - 10.2 itself restore or procure the restoration of EFA Data and may invoice the Contractor for any reasonable expenses incurred in doing so.
11. If at any time the Contractor suspects or has reason to believe that EFA Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, the Contractor shall notify the EFA immediately and inform the EFA of the remedial action the Contractor proposes to take.
12. The Contractor shall comply, and shall procure that Personnel comply, with EFA's Security Standards as set out in the annexe to this schedule 8 and the Security Plan.
13. The Contractor shall ensure that the Security Plan fully complies with the EFA Security Standards.
14. The EFA shall notify the Contractor of any changes to the EFA Security Standards.

15. If the Contractor believes that a change to the EFA Security Standards will have a material and unavoidable effect on its costs it may submit a request for a Variation in accordance with the Change Control Procedure. Any request must include evidence of the cause of any increased costs and the steps it has taken to mitigate those costs.
16. Until a Variation is agreed pursuant to paragraph 15 the Contractor shall continue to perform the Services in accordance with its existing obligations.
17. The Contractor shall use the latest versions of anti-virus definitions available to check for and delete Malicious Software from the Contractor's ICT.
18. Notwithstanding paragraph 17, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption EFA Data, assist each other to mitigate any losses and to restore the Services to their maximum operating efficiency.
19. Any cost arising out of the actions of the Parties taken in compliance with paragraph 18 shall be borne:
  - 19.1 by the Contractor if the Malicious Software originates from the Contractor's software, any software owned by a third party or EFA Data whilst under the control of the Contractor; and
  - 19.2 by the EFA if the Malicious Software originates from the EFA's software or EFA Data whilst under the control of the EFA.

## ANNEXE to Schedule 8

### EFA SECURITY STANDARDS

- 1.1 The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- (Guidance: Providers on the HMG Digital Marketplace / GCloud or Public Service Network (PSN) that have demonstrated compliance, as part of their scheme application, to the relevant scheme's security framework, such as the HMG Cloud Security Principles for the HMG Digital Marketplace / GCloud, may on presentation of suitable evidence of compliance be excused from compliance to similar clauses within the DfE Security Clauses detailed in this section (Section 1).)*
- 1.2 Where the Contractor will provide ICT products or Services or otherwise handle information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) 25 September 2014, or any subsequent updated document, are mandated; that "Contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme". The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
- *(Guidance: The Department's expectation is that the certification scope will be relevant to the services supplied to, or on behalf of, the Department. However, where a Contractor or (sub) Contractor is able to evidence a valid exception or certification to an equivalent recognised scheme or standard, such as ISO 27001, then certification under the Cyber Essentials scheme could be waived and this clause may be removed. Changes to the Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - Action Note 09/14 25 September 2014 will be tracked by the DSU)*
  - *(Guidance: The terms OFFICIAL and OFFICIAL-SENSITIVE are taken from the Government Security Classification Policy (GSCP). The Department's expectations are that all Contractors shall handle the Department's information in a manner compliant with the GSCP – see 12.4 below. Details of the GSCP can be found on the GOV.UK website at: <https://www.gov.uk/government/publications/government-security-classifications>.)*
- 1.3 The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- *(Guidance: The Department's expectation is that Contractor demonstrating conformance to ISO/IEC 27001 will be able to provide the Department with copies of their Scope of Conformance and Statement of Applicability.)*
- 1.4 The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service, and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- *(Guidance: The Department's expectations are that all Contractors shall handle the Department's information in a manner compliant with the GSCP. Details of the GSCP can be found on the GOV.UK website at: <https://www.gov.uk/government/publications/government-security-classifications>.)*
- 1.5 Departmental Data being handled in the course of providing the ICT solution or service must be segregated from other data on the Contractor's or sub-Contractor's own IT equipment to both protect the Departmental Data and enable it to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-Contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 12.14.
- *(Guidance: Advice on HMG secure sanitisation policy and approved methods are described in HMG IS5.)*

- 1.6 The Contractor shall have in place and maintain physical security and entry control mechanisms (e.g. door access) to premises and sensitive areas and separate logical access controls (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.
- *(Guidance: Where the Contractor's and sub-Contractor services are wholly carried out within Departmental premises and all access to buildings or ICT systems is managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause and it need not be included.)*
- 1.7 The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- *(Guidance: Where the Contractor's and sub-Contractor services are wholly carried out using Departmental ICT resources or locations managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause and it need not be included.)*
- 1.8 Any electronic transfer methods across public space or cyberspace, including third party provider networks must be protected via encryption which has been certified to a minimum of FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- *(Guidance: The terms "public space" and "cyberspace" are used to describe the internet and any commercially provided third party network used to transmit Departmental information. Even where the Contractor's and sub-Contractor services are wholly carried out using Departmental ICT resources managed directly by the Department as part of the service, if there is still the possibility of emails being sent to external addresses, this clause should be included.)*
- 1.9 Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 12.10 and 12.11 below.
- 1.10 Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the Contractor or (sub-)Contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department.
- *(Guidance: Where the use of removable media as described at Clause 12.9 above is either prohibited or not required in order to deliver the service this clause shall be revised as follows: - 'The use of removable media in any form is not permitted'.)*
- 1.11 All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the Contractor or sub-Contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department.
- *(Guidance: Where there is no suitable FIPS140-2 encryption product available to provide the necessary full-disk encryption, the Department shall agree a suitable alternative product that meets 'industry good practice' in this area with the Contractor or sub-Contractor. Where the Contractor's and sub-Contractor services are wholly carried out using Departmental ICT resources managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause and it need not be included.)*

- 1.12 Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure waste paper organisation.
- *(Guidance: The term 'lock and key' is defined as: "securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user's sole control and to which they hold the keys".)*
- 1.13 When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- *(Guidance: 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 travelling outside of official premises or buildings).*
- 1.14 At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed in accordance with the current HMG policy (HMG IS5) using a CESG approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-Contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- *(Guidance: Where no departmental information or data shall be held by the Contractor or sub-Contractor, in either physical or logical form this clause may be removed.)*
  - *(Guidance: Where there is no acceptable secure sanitisation method available for a piece of equipment, or it is not possible to sanitise the equipment due to an irrecoverable technical defect, the storage media involved shall be destroyed using an approved method described in HMG IS5.)*
- 1.15 Access by Contractor or sub-Contractor staff to Departmental Data shall be confined to those individuals who have a "need-to-know" and the appropriate level of security clearance, as required by the Department for those individuals whose access is essential for the purpose of their duties. All employees with direct or indirect access to Departmental Data must be subject to pre-employment checks equivalent to or higher than the Baseline Personnel Security Standard (BPSS)
- *(Guidance: Further details of the requirements for BPSS clearance are available on the website at: <https://www.gov.uk/government/publications/security-policy-framework>)*
- 1.16 All Contractor or sub-Contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 1.17 The Contractor shall, as a minimum, have in place robust and ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might be, or could lead to, a disruption, loss, emergency or crisis. When a certificate is not available it shall be necessary to verify the ongoing effectiveness of the ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures, to the extent that the Contractor must have tested/exercised these plans within the last 12 months and produced a written report of the test/exercise, outcome and feedback, including required actions.
- *(Guidance: The creation of robust business continuity and disaster recovery plans are aligned with industry good practice and it is the Department's expectation that all vendors providing services or infrastructure to the Department will have plans that are aligned to the ISO 22301 standard in place. Further information on the requirements of ISO 22301 may be found in the standard.)*

- 1.18 Any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, or any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- *(Guidance: The Department's expectation is that non-compliances, or any suspected or actual breach of the confidentiality, integrity or availability of the Department's Data shall be reported as incidents and investigated by the vendor with outcomes being notified to the Department.)*
- 1.19 The Contractor shall ensure that any IT systems and hosting environments that are used to hold Departmental Data being handled, stored or processed in the course of providing this service shall be subject to an independent IT Health Check (ITHC) using a CESG approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- *(Guidance: Further information on IT Health Checks and the CESG CHECK Scheme which enables penetration testing by CESG approved companies can be found on the CESG website at: <https://www.cesg.gov.uk/scheme/penetration-testing>.)*
- 1.20 The Contractor or sub-Contractors providing the service will provide the Department with full details of any actual storage outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management or support function from outside the UK. The Contractor or sub-Contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- *(Guidance: The offshoring of HMG information outside of the UK is subject to approval by the Departmental SIRO and, in some cases, also by the Office of the Government Senior Information Risk Owner (OGSIRO). Further information on this process can be found at: <https://ogsirooffshoring.zendesk.com/hc/en-us/articles/203107991-HMG-s-Offshoring-Policy>)*
- 1.21 The Department reserves the right to audit the Contractor or sub-Contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any sub-Contractors, compliance with the clauses contained in this Section.
- 1.22 The Contractor shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party Contractors, sub-Contractors or partners who could potentially access Departmental Data in the course of providing this service.

## Schedule 9

### Commercially Sensitive Information

The proposal document dated 8 September 2016 has been prepared by Deloitte LLP for the sole purpose of providing a proposal to the EFA in order that they may evaluate the capabilities of Deloitte LLP to supply the proposed services.

The information contained had been compiled by Deloitte LLP and includes material which may have been obtained from information provided by the EFA or by third parties, which has been taken in good faith. Deloitte LLP cannot accept responsibility for the accuracy for this material.

Deloitte LLP considers the information listed below to be exempt from disclosure under the Freedom of Information Act (FoIA) due to it being commercially sensitive:

Item	Duration of confidentiality
All documentation relating to our detailed pricing and financial modelling approach, including the basis on which the final price is calculated. The exception to this is the overall price, which is acknowledge must be published in line with the Government Transparency Agenda.	Indefinite
Information relating to our cost base	Indefinite
All documentation relating to third parties including, but not limited to, credentials and references for work for other clients	Indefinite
Personal information relating to individuals including, but not limited to CVs, pen portraits and contact details	Indefinite
Information relating to Deloitte's business plans, strategy and competitive position and approach	Indefinite
Our proposal document, approach and methodologies	Indefinite
Information on our insurance and accounts that has not been subject to public reporting	Indefinite

EFA confirm that they will inform the Contractor of all requests from third parties for information listed above, and that if, following consultation EFA do disclose the information, we request that any disclaimer is agreed with the contractor in advance, and reproduced in full in any copies issued.

In addition, we note that the Government's Transparency Agenda may require the publication of all tender documents and Government contracts. In accordance with guidance issued by GPS in this regard, and Code of Practice for FoIA, EFA will need to consult with the contractor about the redaction (as envisaged in the GPS guidance and Code of Practice) of certain parts of the contract, including those areas identified above, for this work and this proposal.

Any enquiries about what may be commercially sensitive or queries about disclosure should be directed to <redacted> on telephone <redacted> or <redacted> or <redacted> on telephone <redacted> or <redacted>.

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## **Schedule 10**

### **The Contractor's Solution**

The Contractor's Solution is the tender provided by Deloitte on the 8 September 2016, responding to the Official Journal of the European Union notice for the required service that was published on 8 August 2016.

Schedule 11

Intellectual Property Record

This Schedule provides a record of the intellectual property used for the purpose of delivering the services under this agreement, and confirms where relevant ownership rests.

Component	Proposed IP ownership	Exclusions	Comments
<redacted>	<redacted>		
<redacted>	<redacted>		<redacted>
<redacted>	<redacted>		<redacted>
<redacted>	<redacted>	<redacted>	<redacted>
<redacted>	<redacted>		<redacted>
<redacted>	<redacted>		<redacted>
<redacted>	<redacted>		<redacted>
<redacted>	<redacted>	<redacted>	<redacted>
<redacted>	<redacted>		<redacted>

Component	Proposed IP ownership	Exclusions	Comments
<redacted>	<redacted>		<redacted>
<redacted>	<redacted>		<redacted>
<redacted>	<redacted>		<redacted>