

THE SECRETARY OF STATE FOR EDUCATION

- AND -



USER DIGITAL PLATFORM CALL OFF CONTRACT
for the supply of the
National Professional Qualifications Delivery Framework

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THIS CONTRACT is made on 12 07 2021

BETWEEN

1. **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT acting as part of the Crown ("The Department"); or
 2. [REDACTED] (Company No. [REDACTED]) whose registered office is at [REDACTED]
[REDACTED] (the "Contractor");
- together, the "Parties"

WHEREAS:

- a) By way of an OJEU notice dated 11th November 2020, the Department undertook a procurement for service providers to be appointed to a Framework Agreement for the supply of National Professional Qualifications.
- b) The Contractor was one of the Potential Providers that submitted the most economically advantageous tender and has therefore been appointed to the framework agreement.
- c) This Call Off Contract ("the Contract") sets out the terms and conditions that govern the provision of the services.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

1. INTERPRETATION

- 1.1. In this Contract the following words shall mean:-

"Agent"	means an organisation or individual engaged by the Department to represent it;
"Assessed Cost"	means the estimated cost of remedying a failure where the Customer requires the Contractor to take action in accordance with clause 9.4
"Affiliate"	in relation to any person, the holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 and Schedule 6 of the Companies Act 2006
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (1) Government Department; (2) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (3) Non-Ministerial Department; or (4) Executive Agency;

"Charge"	means the Charge made by the Contractor to the Department in accordance with the Part 1 of Schedule 2 of this Call Off Contract;
"Cohort"	means a group of Teachers or head teachers that are undertaking an NPQ or receiving the additional support for new head teachers as appropriate;
"Cohort Commencement Date"	means the date that the Teachers commence their induction. If this Call Off Contract covers more than one Cohort, it shall be the date that the first Cohort commences;
"Contract Date"	means the date this Contract is duly executed as stated above;
"Confidential Information"	means information as defined in this Contract which includes the Department's Confidential Information and/or the Contractor's Confidential Information including for the Contractor the information set out in Schedule 10 (Commercially Sensitive Information);
"Contracting Department"	any contracting Department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Department;
"Contract Period"	shall be the contract duration as set out in clause 2.1;
"the Contractor's Contract Manager"	means [REDACTED]
"Contractor Personnel"	all employees, Agents, consultants, and contractors of the Contractor and/or of any Sub-Contractor engaged by the Contractor;
"Control"	means a person that 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 " shall be interpreted accordingly;
"Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer"	have the meaning given in the GDPR;
"Correctly Submitted Invoice"	means an invoice that is delivered in timing in accordance with the Contract; is for the correct sum; in respect of goods/services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, Contractor name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated address;
"Crown Body"	any department, office or agency of the Crown;

“the Department’s Contract Manager”	means [REDACTED]
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“DPA 2018”	Data Protection Act 2018;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“Default”	any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement: (a) in the case of the Department, of its employees, servants, agents; or (b) in the case of the Contractor, of its Subcontractors or any Supplier Personnel, in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;
“Deliverable”	an item or feature delivered or to be delivered by the Contractor at any stage during the performance of this Agreement;
“Delivery Implementation Plan”	means the Implementation Plan included in the Contractor’s Delivery Plan submitted with the Contractor’s Quotation for the Call Off Contract;
“Delivery Plan”	means the Delivery Plan submitted with the Contractor’s Quotation and included in Schedule 1: Part 2 – The Contractor’s Solution;
“the Department or DfE”	means the Department for Education and its agencies;
“Department Data”	(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 which are:

	<p>(i) supplied to the Contractor by or on behalf of the Department; and/or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;'</p>
"Department's Intellectual Property Rights"	means all Intellectual Property Rights comprised in or necessary for or arising from the performance of the Services;
"Digital Platform"	means the Contractor's technology and ICT systems including any portal that will be used to deliver any part of the Services;
"Disclosure and Barring Service or DBS"	the Home Office sponsored safeguarding services that helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children;
"Employee Transfer Date"	means in respect of any Transferring Contractor Employee the date on which the part of the Services to which they are assigned transfers from the Contractor to any Successor Contractor;
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations;
"Existing IPR"	any and all IPR that are owned by or licensed to either Party which are or have been developed independently of the Contract whether prior to the date of the Contract or otherwise.
"Exit Plan"	the plan prepared by the Contractor in accordance with clause 15.11 setting out the Contractor's methodology for achieving an orderly transition of the Services from the contractor to the Department or a Successor Contractor on the expiry or termination of this Contract;
"Expiry Date"	means 29 th March 2025, being the last day of the Contract Period unless the Contract Period is extended in accordance with Clause 2;
"Extension Period"	shall have the meaning given to it in clause 2.2;
"External Evaluator"	means the independent evaluator or evaluators appointed by the Department further to paragraph 17 of Schedule 1 (Part 1: The Services);
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
"Force Majeure"	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any

	<p>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 catastrophe, natural or man-made, but excluding:</p> <p>(a) any industrial action occurring within the Contractor's or any of its Sub-Contractor's organisation, or otherwise involving the Contractor Staff; or</p> <p>(b) the failure by any Sub-Contractor of the Contractor to perform its obligations under any Sub-Contract.</p>
"Framework Agreement"	means the Framework Agreement dated 30 th March 2021 between the Department and the Contractor which was awarded under Regulation 33 of the Regulations and under which the Services are being called off;
"Framework Tender"	Means the tender submitted by the Contractor during the procurement process to appoint the Framework contractors;
"Future Transfer Date"	means the date of termination or expiry of this Contract;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679);
"Good Industry Practice"	that degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or any Sub-Contractor under the same or similar circumstances;
"Her Majesty's Government"	means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant, or officer of such Government;
"ICT"	means information and communications technology;
"Implementation Plan"	means the Delivery Implementation Plan or Set Up Implementation Plan included in Schedule 7;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"IPR Claims"	any claim against the Department of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPRs used by or on behalf of the Contractor (including by a Sub-Contractor) in relation to the delivery of the Services save for any such claim to the extent that it is caused by any use by or on behalf of the Department of any IPRs that are relevant to this Contract in combination with any item not supplied or recommended by the Contractor pursuant to this Contract or for a purpose not reasonably to be inferred from the Specification or the provisions of this Contract
"Intellectual Property Right"	means any copyright, rights in designs, database rights, domain names, trademarks, service marks, patents or any applications for

	any of the foregoing, know-how or similar rights or obligations (whether registerable or not) including Moral Rights as defined in Chapter IV of the Copyright, Designs and Patents Act 1988;
“LED”	Law Enforcement Directive (Directive (EU) 2016/680);
“Losses”	means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Milestone”	means an activity, or series of activities or tasks or deliverables associated with the delivery of the Service that the Contractor is required to meet, achieve, complete or deliver by a stated date;
“Milestone Date”	means the date by which the Contractor shall achieve the related Milestone;
“New IPR”	IPR in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of a Call Off Contract and updates and amendments of these items including (but not limited to) data base schemes;
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
“Prescribed Particulars”	means the information prescribed in Schedule 13 (Staff Transfer);
“Property”	means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract;
“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
“Quotation”	means the Contractor’s offer submitted to the Department to undertake this Call Off Contract
“Regulatory Bodies”	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Department and "Regulatory Body" shall be construed accordingly;
“the Regulations”	means the Public Contracts Regulations 2015;
“Relevant Legislation”	means any statute or regulations or the EC Treaty (or any directives or regulations made under them);

"Relevant Personnel Documentation"	means the information in relation to Transferring Contractor Employees as prescribed in Part C of Schedule 13 (Staff Transfer);
"Replacement Services"	any services which are the same as or substantially similar to any of the Services and which the Department receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by the Department internally or by any third party.
"Replacement Supplier"	any third party provider of Replacement Services appointed by the Department from time to time (or where the Department is providing Replacement Services for its own account, the Department)
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Required Insurances"	means the insurances as set out in clause 9.7;
"the School"	means the organisation named as a Party to this Contract;
"Set Up Implementation Plan"	means the Implementation Plan submitted by the Contractor in their Framework Tender;
"Serious Breach"	means: (a) any breach referred to as a Serious Breach in the Contract; and/or (b) any breach or breaches which adversely, materially, or substantially affect the performance or delivery of the Services in part or in full, or the provisions of a safe, healthy and supportive learning environment. Serious Breach includes but is not limited to: (i) a breach of security that adversely affects the Personal Data or privacy of an individual; and (ii) failure to comply with Law, or acts or omissions by the Contractor that endanger the health or safety of others;
"the Services"	means the services to be performed by the Contractor as described in Schedule 1;
"Service Failure"	means the failure of the Contractor to meet SLAs, KPIs and Milestones as described in this Call Off Contract;
"SME"	means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and any subsequent revisions;

"Staffing Information"	means the Staffing Information provided by the Contractor in accordance with Schedule 13;
"Sub-Contract"	means a contract between two or more suppliers, at any stage of remoteness from the Department 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;
"Sub-Contractor"	the third party with whom the Contractor enters into a Sub-Contract or its servants or Agents and any third party with whom that third party enters into a Sub-Contract or its servants or Agents;
"Sub-processor"	any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract;
"Successor Contractor"	means the Contractor that delivers services that are substantially the same as the Services after the expiry or termination of the Contract;
"Termination Date"	means the date set out in a termination notice on which this Contract (or a part of it as the case may be) is to terminate;
"Transferring Contractor Employees"	means those employees of the Contractor who are at the Future Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Contract pursuant to TUPE or the Acquired Rights Directive 187/77/EC or otherwise to any Successor Contractor;
"Transfer of Undertakings (Protection of Employment) Regulations 2006 or TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time;
"Variation"	A change to the terms of this Contract agreed in accordance with Schedule 5;
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2. References to "Contract" mean this contract (and includes the Schedules). References to "clauses" and "Schedules" mean clauses of and Schedules to this Contract. The provisions of the Schedules shall be binding on the parties as if set out in full in this Contract.

1.3. Reference to the singular include the plural and vice versa and references to any gender include both genders and the neuter. References to a person include any individual, firm, unincorporated association or body corporate.

2. COMMENCEMENT AND CONTINUATION

2.1. The Contractor shall commence the Services on the Contract Date and, subject to clause 10.1 shall complete the Services on or before the Expiry Date.

2.2. The Department shall have the right to request in writing that the Contract Period be extended for one or more period on one or more occasion but the maximum cumulative Extension Period shall not be longer than the original Contract Period.

2.3. If the Department exercises its right to request an extension under clause 2.2, the last date of the Extension Period shall be the new Expiry Date and references to "Expiry Date" shall be interpreted accordingly.

3. CONTRACTOR'S OBLIGATIONS

- 3.1. The Contractor shall promptly and efficiently deliver the Services in accordance with the provisions set out in Schedule 1: Part 1 (The Services), the special conditions set out in Schedule 3 (Additional Clauses) and in accordance with the Schedule 1: Part 2 (The Contractor's Solution). Where there is any conflict between the terms of this Contract and the special conditions set out in Schedule 3, the special conditions shall prevail.
- 3.2. The Contractor shall comply with the accounting and performance measures set out in Schedule 2 (Pricing and Performance Measures).
- 3.3. The Contractor implements quality management arrangements and complies with the Quality Assurance requirements set out in Schedule 2 and in Section 2B – of the Specification to ensure the Services are delivered to a consistent and high standard. The Contractor notifies the Department as soon as practicable in the event they become aware of any matter(s) which may affect the quality of the Services.
- 3.4. The Contractor attends meetings relating to the Services, Continuous Improvement and the Contractor's performance with the Department as set out in the Specification and this Contract. The Contractor is not paid separately for attending such meetings unless expressly set out in the Call Off Order.
- 3.5. The Contractor shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.
- 3.6. In entering into this Contract the Contractor is confirming that:
- 3.6.1. it has read and understood the Department's expectations of all Services as set out in the Government's Contractor Code of Conduct at <https://www.gov.uk/government/publications/Contractor-code-of-conduct> and the Contractor will deliver the Services in accordance with the Contractor Code; and
- 3.6.2. it will deliver the Services by reference to the Contractor Code as dated February 2019 and thereafter as updated from time to time.
- 3.7. **NOT USED**
- 3.8. **NOT USED**
- 4. DEPARTMENT'S OBLIGATIONS**
- 4.1. The Department will comply with the payment provisions of Schedule 2: Part 1 (Pricing) provided that the Department has received full and accurate information and documentation as required by Schedule 2 to be submitted by the Contractor for work completed to the satisfaction of the Department.
- 5. NOT USED**
- 6. MANAGEMENT**
- 6.1. The Contractor shall promptly comply with all reasonable requests or directions of the Department's Contract Manager in respect of the Services.
- 6.2. The Contractor shall address any enquiries about procedural or contractual matters in writing to the Department's Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.
- 6.3. The Contractor's key personnel and Sub-Contractor are set out in Schedule 9 (Key Personnel and Sub-Contractors). The Contractor shall notify the Department of any changes to its key personnel or any proposed change of Sub-Contractors. In relation to any proposed change of Sub-Contractor the Contractor shall comply with the provisions of clause 7.6-7.8 and clause 19.
- 7. CONTRACTOR'S EMPLOYEES AND SUB-CONTRACTORS**
- 7.1. The appointment by the Contractor of Sub-Contractors shall be subject always to the requirements of clause 19. Where the Contractor does enter into any Sub-Contract the provisions of clauses 7.2 to 7.10 shall apply.

- 7.2. Where the Contractor enters into a contract with one or more for the purpose of performing its obligations under the Contract (the "Sub-Contractor") it shall ensure prompt payment in accordance with this clause 7.1. Unless otherwise agreed by the Department in writing, the Contractor shall ensure that any contract requiring payment to a Sub-Contractor shall provide for undisputed sums due to the Sub-Contractor to be made within 30 days from the receipt of a valid invoice.
- 7.3. The Contractor shall comply with clause 7.2 and shall provide, at the Department's request, sufficient evidence to demonstrate compliance.
- 7.4. The Contractor shall take all reasonable steps to satisfy itself that the Contractor Personnel it engages are suitable in all respects to perform the Services.
- 7.5. The Contractor shall give to the Department, if so requested a list of all persons who are or may be at any time directly concerned with the performance of this Contract specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the Department may reasonably require.
- 7.6. If the Department notifies the Contractor that it reasonably considers that a Sub-Contractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Contract, then the Contractor shall, as soon as is reasonably practicable, take all such steps as the Department considers necessary to remedy the situation or, if so reasonably required by the Department, shall remove the said Sub-Contractor from providing the Services and shall provide a suitable replacement (at no cost to the Department).
- 7.7. The Contractor shall take all reasonable steps to avoid changes of Sub-Contractors assigned to and accepted to provide the Services under the Contract except whenever changes are unavoidable or of a temporary nature. The Contractor shall give immediate notice in writing to the Department's Contract Manager of proposals to change Sub-Contractors.
- 7.8. The Contractor shall immediately notify the Department if they have any concerns regarding the propriety of any of its Sub-Contractors in respect of work/services rendered in connection with this Contract.
- 7.9. The Contractor acknowledges that Key Contractor Staff and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Contractor Staff and Key Sub-Contractors listed in Schedule 9 as at the Effective Date.
- 7.10. The Contractor agrees that:
- 7.10.1. Key Contractor Staff shall not be released from supplying the Services without the Department's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 7.10.2. Any replacements of Key Contractor Staff or Sub-Contractors shall be subject to the Department's consent and shall be of at least equal status, experience and skills to Key Contractor Staff or Sub-Contractor(s) being replaced and be suitable for the responsibilities of that person or company in relation to the Services.
- 7.11. The Department shall not unreasonably withhold consent under clauses 7.10. Such consent 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 Contractor Staff or Key Sub-Contractors.
- 7.12. The Department may require the Contractor to remove any Key Contractor Staff or Sub-Contractors who the Department considers is in any respect unsatisfactory.
- 7.13. The Department shall not be liable for the cost of replacing any Key Contractor Staff or Sub-Contractors and the Contractor shall indemnify the Department against all Employment Liabilities that may arise in this respect.

- 7.14. The Contractor, its employees and Sub-Contractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
- 7.15. The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Department's reasonable security requirements as required from time to time.
- 7.16. The Parties agree that:
- 7.16.1. the Contractor shall both during and after the Contract Period indemnify the Department against all Employee Liabilities that may arise as a result of any claims brought against the Department by any person where such claim arises from any act or omission of the Contractor or any Contractor Personnel; and
- 7.16.2. the Department shall both during and after the Contract Period indemnify the Contractor against all Employee Liabilities that may arise as a result of any claims brought against the Contractor by any person where such claim arises from any act or omission of the Department or any of the Department's employees, Agents, consultants and contractors.

Staff Transfer

- 7.17. The Parties agree that:
- 7.17.1. where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 13 (Staff Transfer) shall apply as follows:
- (i) where the Relevant Transfer involves the transfer of Transferring Department Employees, Part A and Part D of Schedule 13 (Staff Transfer) shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Contractor Employees, Part B and Part D of Schedule 13 (Staff Transfer) shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Department Employees and Transferring Former Contractor Employees, Parts A, B and D of Schedule 13 (Staff Transfer) shall apply; and (iv) Part C of Schedule 13 (Staff Transfer) shall not apply.
- 7.17.2. where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 13 (Staff Transfer) shall apply, Part D of Schedule 13 may apply and Parts A and B of Schedule 13 (Staff Transfer) shall not apply; and
- 7.17.3. Part E of Schedule 13 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services

7A SAFEGUARDING

- 7A.1 The Contractor shall make arrangements for ensuring that the Provision is provided with a view to safeguarding and promoting the welfare of children receiving education or training. In doing so, the Contractor shall have regard to any guidance published, from time to time, by the Secretary of State for Education, which sets out the expectations in relation to safeguarding practice within schools. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this Agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Contract.
- 7A.2 The Contractor must carry out appropriate Disclosure and Barring Service checks on all applicants including those from outside the UK for employment where such applicants would be employed to work in regulated activity relating to children or vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) if successful, and must seek additional information about an applicant's conduct.

- 7A.3 The Contractor shall not employ or engage, or continue to employ or engage, any person who is subject to a prohibition order made under section 141B of the Education Act 2002 to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).
- 7A.4 The Contractor shall, in circumstances where it Sub-Contracts the management and / or delivery of the Services under this Contract, ensure that the content of this clause 7A is included in its contract with Sub-Contractors.
- 7A.5 The Contractor and its Sub-Contractors must be able to demonstrate that they have robust record-keeping procedures in respect of safeguarding through checks on record keeping undertaken.
- 7A.6 A breach by the Contractor and / or its Sub-Contractors of this clause 7A shall constitute a Serious Breach of the Contract.

8. INTELLECTUAL PROPERTY RIGHTS (IPR)

- 8.1. Each Party keeps ownership of its own Existing IPR.
- 8.2. Pursuant to clause 2.1 the Contractor gives the Department a non-exclusive, perpetual, royalty-free, irrevocable, transferable UK-wide licence to use, change and sub-license the Contractor's Existing IPR to enable it to both:
- 8.2.1. receive and use the Services;
 - 8.2.2. make use of the Services by a Replacement Supplier;
- and the Department gives the Contractor and its subcontractor a licence to use the Department's Existing IPR for the purpose of fulfilling its obligations during the Contract Period.
- 8.3. Any New IPR created under this Contract is owned by the Contractor. The Contractor gives the Department a non-exclusive, perpetual, royalty-free, irrevocable, transferable UK-wide licence to use, change and sub-license the Contractor's Existing IPR and New IPR to enable it to:
- 8.3.1. receive the Services under this Contract; and
 - 8.3.2. make use of the Services provided by a Replacement Supplier; and
 - 8.3.3. make use of the materials created under this Contract in other services related to, but not limited to, NPQs.
- 8.4. Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 8.5. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, other than as set out in this clause 8 or as agreed in writing.
- 8.6. The Contractor shall indemnify the Department against all IPR Claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right.
- 8.7. The Contractor hereby waives any Moral Rights as defined at Chapter IV of the Copyright, Designs and Patents Act 1988.
- 8.8. The Contractor warrants:
- 8.8.1. that the Contractor's Intellectual Property Rights comprise its own original work including where its Intellectual Property Rights were created by or on behalf of the Contractor;
 - 8.8.2. that the Department's Intellectual Property Rights have not and will not be copied wholly or in part from any other work or material;
 - 8.8.3. that the use of or exercise by the Contractor of the Department's Intellectual Property Rights and the Background Intellectual Property will not infringe the rights of any third party;

- 8.8.4. that the Contractor has not granted or assigned any rights of any nature in the Department's Intellectual Property Rights to any third party except to its Sub-Contractors as appropriate.
- 8.9. The Department shall reserve the right to benefit from its investment in developing the National Professional Qualifications and support for new head teachers policy. As detailed in this clause 8, the IPR generated within the Contract shall remain the ownership of the Contractor but be licensed to the Department to use at its own discretion
- 8.10. The provisions of Schedule 14 (Contractor's Digital Platform) shall apply in relation to the Intellectual Property Rights in and licensing of Software.

9. WARRANTY AND INDEMNITY

- 9.1. The Contractor warrants to the Department that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel using Good Industry Practice. The Department will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.
- 9.2. Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Contract then the Department shall be entitled, where appropriate to:
- 9.2.1. require the Contractor promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or
- 9.2.2. if the Department considers it would be impracticable or inappropriate to require the Contractor to take action in accordance with Clause 9.2.1, the Department may assess the cost of remedying the failure ("the Assessed Cost") and deduct from any sums due to the Contractor the Assessed Cost for the period that such failure continues
- 9.3. Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by Law.
- 9.4. The Contractor's liability in respect of the indemnities in Clause 16 (VAT, Income Tax and National Insurance Contributions), Clause 7.11 (Employment Indemnity), Clause 8.6 (IPRs Indemnity), Schedule 13 (Staff Transfer) and the Annexes to Schedule 13 (Staff Transfer) shall be unlimited.
- 9.5. The Department's liability in respect of the indemnities in Clause 7.11 (Employment Indemnity), Schedule 13 (Staff Transfer) and the Annexes to Schedule 13 (Staff Transfer) shall be unlimited.
- 9.6. Subject to Clauses 9.3 and 9.4 (Unlimited Liability) and Clauses 9.9 (Consequential Losses):
- (a) the Contractor's aggregate liability in respect of loss of or damage to the Department Premises or other property or assets of the Department (including technical infrastructure, assets or equipment but excluding any loss or damage to the Department's Data or any other data) that is caused by Defaults of the Contractor occurring in each and any Contract Year shall in no event exceed £10 million;
- (b) the Contractor's aggregate liability in respect of loss of or damage to Department Data or breach of the Data Protection Legislation that is caused by Default of the Contractor occurring in each and any Contract Year shall in no event exceed £10 million;

- (c) the Contractor's aggregate liability in respect of all Service Credits incurred shall be subject to the Service Credit Cap; and
 - (d) the Contractor's aggregate liability in respect of all other Losses incurred by the Department under or in connection with this Contract as a result of Defaults by the Contractor shall in no event exceed:
 - i) in relation to Defaults occurring in the first Contract Year, an amount equal to 150% of the Estimated Year 1 Charges or £5 million whichever is the higher;
 - ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Charges paid and/or due to be paid to the Contractor under this Contract in the Contract Year immediately preceding the occurrence of the Default or £5 million, whichever is the higher; and
 - iii) in relation to Defaults occurring after the end of the Contract Period, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Contract Period or £5 million, whichever is the higher, provided that where any Losses referred to this Clause 9.6(d) have been incurred by the Department as a result of the Contractor's abandonment of this Contract or the Contractor's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such Clause to 150% shall be deemed to be references to 200% and references to £5 million shall be deemed to be references to £8 million.
- 9.7. Deductions from Charges shall not be taken into consideration when calculating the Contractor's liability under Clause 9.6(c).
- 9.8. Subject to Clauses 9.3 and 9.5 (Unlimited Liability) and Clause 9.9 (Consequential Losses) and without prejudice to the Department's obligation to pay the Charges as and when they fall due for payment:
- (a) the Department's total aggregate liability in respect of all Losses incurred by the Contractor under or in connection with this Contract as a result of early termination of this Contract by the Department pursuant to Clause 10.1 shall in no event exceed the amount set out Schedule 12 (Breakage Costs); and
 - (b) the Department's aggregate liability in respect of all Losses incurred by the Contractor under or in connection with this Contract as a result of Defaults of the Department shall in no event exceed:
 - i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
 - ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
 - iii) in relation to Defaults occurring after the end of the Contract Period, an amount equal to the total Charges paid and/or due to be paid to the Contractor in the 12 month period immediately prior to the last day of the Contract Period.
- 9.9. Subject to Clauses 9.3, 9.4 and 9.5 (Unlimited Liability) and Clause 9.10, neither Party shall be liable to the other Party for:
- (a) any indirect, special or consequential Loss; or
 - (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 9.10. Notwithstanding Clause 9.9 but subject to Clause 9.6, the Contractor acknowledges that the Department may, amongst other things, recover from the Contractor the following Losses incurred by the Department to the extent that they arise as a result of a Default by the Contractor:

- (a) any additional operational and/or administrative costs and expenses incurred by the Department, including costs relating to time spent by or on behalf of the Department in dealing with the consequences of the Default;
 - (b) any wasted expenditure or charges;
 - (c) the additional cost of procuring Replacement Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
 - (d) any compensation or interest paid to a third party by the Department; and
 - (e) any fine or penalty incurred by the Department pursuant to Law and any costs incurred by the Department in defending any proceedings which result in such fine or penalty.
- 9.11. Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 14 (Conduct of Claims) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.
- 9.12. Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.
- 9.13. The Department's total liability to the Contractor under this Contract shall be limited to paying the Charges in accordance with schedule 2 (Pricing) and complying with any other contract provision in the Call-Off Contract that requires a payment to be made by the Department
- 9.14. All property of the Contractor whilst on the Department's premises shall be there at the risk of the Contractor and the Department shall accept no liability for any loss or damage howsoever occurring to it.
- 9.15. Without prejudice to its liability to indemnify the Department under this Contract the Contractor shall take out and maintain in force or procure the taking out and maintenance of the Required Insurances and any other insurances as may be required by law. The Required Insurances shall be effective in each case no later than the date on which the relevant risk commences.
- 9.16. The Required Insurances referred to in clause 9.10 shall amount to:
- 9.16.1. at least five million pounds (£5 million) in respect of public liability cover in respect of each and every occurrence;
 - 9.16.2. at least five million pounds (£5 million) in respect of employer's liability cover in respect of each and every occurrence; and
 - 9.16.3. at least five million pounds (£5 million) in respect of professional indemnity cover in respect of each and every claim;
- 9.17. The Department may review the minimum indemnity limits specified for the Required Insurances in clause 9.11 on an annual basis. Any Change that is required to the minimum indemnity limits as a result of the Department's review shall be implemented in accordance with the Change Control Procedure.
- 9.18. The Contractor shall provide to the Department by 31st August annually during the Contract Period and at other times on request evidence confirming that the Required Insurances are and remain in place.

9A FINANCIAL DISTRESS

- 9A.1 The Parties shall comply with the provisions of Schedule 4 (Financial Distress) in relation to the assessment of financial standing of the Contractor and the consequences of a change to that financial standing.
- 9A.2 In the event that a Financial Distress Event occurs the provisions of Schedule 4 (Financial Distress) shall apply.

10. TERMINATION

- 10.1. This Contract may be terminated on notice by the Department giving to the Contractor at least 90 days' notice in writing.
- 10.2. If the Department terminates the Contract under clause 10.1 the Department shall make no further payments to the Contractor except for a Breakage Costs Payment assessed in accordance with Schedule 12 (Breakage Costs), Services supplied by the Contractor prior to termination where the payment has yet to be made by the Department.
- 10.3. In the event of a Serious Breach of this Contract by either party which can be remedied, the other party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the party not in breach may terminate this Contract with immediate effect by notice in writing.
- 10.4. If the Department holds the view, acting reasonably, that the Contractor has committed a Serious Breach of the Contract that it would pose a risk to the health and safety of children or vulnerable adults to permit it to continue to deliver the Services, it may require the Contractor to suspend delivery of the Services pending further investigations.
- 10.5. This Contract may be terminated by the Department with immediate effect by notice in writing if at any time:
 - 10.5.1. the Contractor commits a Serious Breach which cannot be remedied;
 - 10.5.2. in England and Wales, a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or it makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors;
 - 10.5.3. in Scotland, if the Contractor becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) act 1985;
 - 10.5.4. where the Contractor is a firm or a number of persons acting together in any capacity (including as trustees), any event referred to in Sub-Clauses 10.4.1 or 10.4.2 occurs in respect of any partner in the firm or any of those persons (including any trustees);
 - 10.5.5. the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct;
 - 10.5.6. the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;
 - 10.5.7. the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to the payment of Social Security contributions;
 - 10.5.8. the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to payment of taxes;
 - 10.5.9. the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Contract;
 - 10.5.10. any of the provisions of paragraph 4 of Schedule 4 (Financial Distress) have arisen;
- 10.6. Nothing in this clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

Serious Breach due to not achieving a Milestone Date in a User Digital Platform Call Off Contract

- 10.7. If the Contractor has not achieved a Milestone Date as included in any User Digital Platform Call Off Contract it has been awarded, the Contractor would have committed a Serious Breach and

clauses 10.3 or 10.5.1 shall apply to this and any other Call Off Contract it has been awarded under the Framework Agreement.

10.7.1. For the avoidance of doubt, a failure to meet the Milestone Date associated with Milestone 3 in the User Digital Platform Call Off Contract will be treated as a Serious Breach.

11. STATUS OF CONTRACTOR

- 11.1. In carrying out its obligations under this Contract the Contractor agrees that it will be acting as principal and not as the Agent of the Department.
- 11.2. The Contractor shall not say or do anything that may lead any other person to believe that the Contractor is acting as the Agent of the Department.

12. CONFIDENTIALITY

- 12.1. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
 - 12.1.1. treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - 12.1.2. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 12.2. Clause 12 shall not apply to the extent that:
 - 12.2.1. such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 13 (Freedom of Information);
 - 12.2.2. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 12.2.3. such information was obtained from a third party without obligation of confidentiality;
 - 12.2.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 12.2.5. it is independently developed without access to the other party's Confidential Information.
- 12.3. The Contractor may only disclose the Department's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Project and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 12.4. The Contractor shall not, and shall ensure that the Contractor Personnel do not, use any of the Department's Confidential Information received otherwise than for the purposes of this Contract.
- 12.5. The Contractor shall ensure that its employees, servants or such professional advisors or consultants are aware of the Contractor's obligations under this Contract.
- 12.6. Nothing in this Contract shall prevent the Department from disclosing the Contractor's Confidential Information:
 - 12.6.1. on a confidential basis to any Central Government Body for any proper purpose of the Department or of the relevant Central Government Body;
 - 12.6.2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 12.6.3. to the extent that the Department (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

- 12.6.4. on a confidential basis to a professional adviser, consultant, Contractor, or other person engaged by any of the entities described in clause 12.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 12.6.5. on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or
- 12.6.6. on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.
- 12.7. The Department shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Department, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause 12 is made aware of the Department's obligations of confidentiality.
- 12.8. Nothing in this clause 12 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 12.9. The parties acknowledge that, except for any information that is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 12.10. Subject to clause 12.9, the Contractor hereby gives its consent for the Department to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 12.11. The Department may consult with the Contractor to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.
- 12.12. The Contractor shall assist and cooperate with the Department to enable the Department to publish this Contract.
- 13. FREEDOM OF INFORMATION**
- 13.1. The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department to enable the Department to comply with its information disclosure obligations.
- 13.2. The Contractor shall and shall ensure that its Sub-Contractors shall:
 - 13.2.1. transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - 13.2.2. provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five Working Days (or such other period as the Department may specify) of the Department's request; and
 - 13.2.3. provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 13.3. The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 13.4. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Department.

13.5. The Contractor acknowledges that (notwithstanding the provisions of clause 13) the Department may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:

13.5.1. in certain circumstances without consulting the Contractor; or

13.5.2. following consultation with the Contractor and having taken their views into account;

13.6. provided always that where clause 13.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

13.7. The Contractor shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

14. AUDIT AND SERVICE CONTINUITY PLAN

14.1. The Contractor shall provide access at all reasonable times to the Department's internal auditors or other duly authorised staff or Agents to inspect such documents as the Department considers necessary in connection with this Contract and where appropriate speak to the Contractors employees.

14.2. The Contractor shall provide the Department with its Service Continuity Plan in accordance with the provisions of Schedule 11 (Service Continuity Plan).

15. TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION

15.1. The Contractor shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.

15.2. If to fulfil the Department's request under Clause 15.1 the Contractor requires resources:

15.2.1. not normally accounted for in delivering the Services; or

15.2.2. no accounted for in the Charges; or

15.2.3. after the Expiry Date;

then the Parties shall agree a variation to the Charges for direct, reasonable and verifiable costs (which in the case of the Contractor shall not exceed the time and materials of the resources required).

15.3. Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in clause 15.8.

15.4. The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility.

15.5. The Department and the Contractor shall act on the basis that TUPE applies on expiry or termination of the Contract where the Department is proposing to re-procure services which are substantially the same as the Services.

15.6. Where any of the provisions in Clause 7.17 apply, the Contractor will comply with the obligations set out in Schedule 13 and:

15.6.1. 6 months preceding the Expiry Date (or within 20 Working Days after the Department or the Contractor has given notice to terminate the Contract), the Contractor shall disclose to the Department and shall permit the Department to disclose to any tenderer for services which are substantially the same as the Services, the Staffing Information of the

Provisional Contractor Personnel List provided that prior to so doing any such tenderer shall have executed in writing a confidentiality undertaking in favour of the Contractor;

- 15.6.2. the Contractor keeps the Staffing Information in the Provisional Contractor Personnel List updated at monthly intervals, to the Department and to the Replacement Supplier information in respect of each employee whom the Contractor reasonably believes will be a Transferring Contractor Employee provided that prior to so doing the Replacement Supplier nominated by the Department shall have executed in writing a confidentiality undertaking in favour of the Contractor;
- 15.6.3. the Contractor shall make reasonable endeavours to assist the Replacement Supplier to communicate with, meet and inform and consult with the employees whom the Contractor reasonably believes will be a Transferring Contractor Employee and their trade union or other employee representatives for the purposes of complying with the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 15.7. Within a period of 21 days following the expiry or termination of this Contract the Contractor shall provide to the Department or the Successor Contractor in writing the Staffing Information in relation to Transferring Contractor Employees in accordance with Schedule 13 (Staff Transfer).
- 15.8. In the event that the Department or the Successor Contractor incurs costs, liabilities or expenditure in respect of Transferring Contractor Employees which is greater than would have been the case if the Required Information supplied by the Contractor had been accurate and complete, then such (net) greater costs, liabilities or expenditure shall be deemed to be costs suffered or incurred by the Department or Successor Contractor and included within the indemnity provided by the Contractor.
- 15.9. The Department or Successor Contractor shall be entitled to recover from the Contractor in full any legal, accountancy and other costs actually and reasonably incurred by the Department or Successor Contractor in connection with the costs and liabilities indemnified by the Contractor.
- 15.10. This clause 15 shall continue in effect for six months following the expiry or termination of this Contract.

EXIT PLAN AND HANDOVER

- 15.11. Further to the requirements of this clause 15 and in accordance with Schedule 1 Part 1 (The Services) the Contractor shall, within three (3) months of the date of this contract prepare and submit to the Department and shall thereafter maintain, an Exit Plan.
- 15.12. The Exit Plan shall set out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the Department and/or its Replacement Supplier at the end of the Contract Period or on the earlier termination of any part of the Contract or cessation of the provision of any part of the Services by the Contractor.
- 15.13. Within thirty (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 24.
- 15.14. 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 Department for review. Within 30 days following submission of the revised Exit Plan, the Parties shall 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 24.
- 15.15. The Contractor shall implement its Exit Plan not less than nine (9) months prior to whichever occurs first out of the Termination Date or the Expiry Date.
- 15.16. The Contractor shall co-operate fully with the Department 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.

- 15.17. Within ten (10) Business Days of being requested by the Department, the Contractor shall transfer to the Department, or any person designated by the Department, 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 Department.
- 15.18. The Contractor shall co-operate fully with the Department in order to enable an efficient and detailed knowledge transfer from the Contractor to the Department or any other Replacement Supplier at the end of the Contract Period or on the earlier termination of any part of the Contract or cessation of the provision of any part of the Services by the Contractor and shall provide the Department free of charge with full access to Contractor Staff, copies of all documents, reports, summaries and any other information requested by the Department. The Contractor shall comply with the Department's request for information no later than fifteen (15) Business Days from the date that that request was made.

16. TAX INDEMNITY

- 16.1. Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration. Where the Department has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs (HMRC) the Department reserves the right to calculate Income Tax and pay it to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.
- 16.2. Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration. Where the Department has deemed the Contractor to be an Off-Payroll Contractor as defined by HMRC the Department reserves the right to calculate primary (employee) National Insurance contributions (NICs) and pay them to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.
- 16.3. The Department may, at any time during the term of this contract, ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 16.1 and 16.2 above or why those clauses do not apply to it.
- 16.4. A request under clause 16.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 16.5. The Department may terminate this Contract if:
- 16.5.1. in the case of a request mentioned in clause 16.3 above if the Contractor:
- (a) fails to provide information in response to the request within a reasonable time, or
 - (b) provides information which is inadequate to demonstrate either how the Contractor complies with clauses 16.1 and 16.2 above or why those clauses do not apply to it;
- 16.5.2. in the case of a request mentioned in clause 16.4 above, the Contractor fails to provide the specified information within the specified period, or;
- 16.5.3. it receives information which demonstrates that, at any time when clauses 16.1 and 16.2 apply, the Contractor is not complying with those clauses.
- 16.6. The Department may supply any information which it receives under clause 16.3 to the Commissioners of HMRC for the purpose of the collection and management of revenue for which they are responsible.
- 16.7. The Contractor warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions

which may be found due from it in relation to any payments or arrangements made under this Contract. The Contractor shall promptly and regularly pay all National Insurance Contributions due from it as a self-employed person and shall account to the HMRC for all taxes due from it in respect of the payments made to it under this Contract.

- 16.8. If, notwithstanding clause 16.7 the HMRC and/or any other appropriate agency consider that the Contractor is an employee of the Department for the purposes of tax and/or national insurance contributions; then the Department shall be entitled to terminate this Contract immediately and deduct from the payments payable to the Contractor under the terms of this Contract, such sums as the HMRC and/or other agencies require in respect of income tax and employee national insurance contributions. The deduction of such tax and national insurance contributions will not affect the status of the Contractor as self-employed for all other purposes.
- 16.9. Without prejudice to the provisions of clause 16.8 above, the Contractor shall indemnify the Department against any liability, assessment or claim made by the HMRC or any other relevant Department arising out of the performance by the Contractor of its obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by the Department in connection with any such assessment or claim.
- 16.10. The Contractor authorises the Department to provide the HMRC and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not the Department is obliged as a matter of law to comply with such request.
- 16.11. The Contractor shall register for value added tax if and when required by law and shall promptly notify the Department for Work and Pensions of its liability for Class 2 and, where appropriate, Class 4 national insurance contributions.

17. DATA PROTECTION

- 17.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Department is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 6.
- 17.2. The Contractor shall notify the Department immediately if it considers that any of the Department's instructions infringe the Data Protection Legislation.
- 17.3. The Contractor shall provide all reasonable assistance to the Department in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Department, include:
- 17.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 17.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 17.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 17.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.4. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 17.4.1. process that Personal Data only in accordance with Schedule 6, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Department before processing the Personal Data unless prohibited by Law;
 - 17.4.2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Department as appropriate to protect against a Data Loss Event having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

17.4.3. ensure that:

- 17.4.3.1. the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 6);
- 17.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (a) are aware of and comply with the Contractor's duties under this clause;
 - (b) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Department or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection, and handling of Personal Data; and

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

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

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

17.4.6. ensure it notifies, and seeks the permission of, any party whose Personal Data is being processed that the Department may share their data with other Government Departments and other organisations for the purposes set out in Schedule 6.

17.5. Subject to clause 17.6, the Contractor shall notify the Department immediately if it:

- 17.5.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
- 17.5.2. receives a request to rectify, block or erase any Personal Data;
- 17.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 17.5.4. receives any communication from the Information Commissioner or any other regulatory Department in connection with Personal Data processed under this Contract;

- 17.5.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 17.5.6. becomes aware of a Data Loss Event.
- 17.6. The Contractor's obligation to notify under clause 17.5 shall include the provision of further information to the Department in phases, as details become available.
- 17.7. Taking into account the nature of the processing, the Contractor shall provide the Department with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Department) including by promptly providing:
 - 17.7.1. the Department with full details and copies of the complaint, communication or request;
 - 17.7.2. such assistance as is reasonably requested by the Department to enable the Department to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 17.7.3. the Department, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 17.7.4. assistance as requested by the Department following any Data Loss Event;
 - 17.7.5. assistance as requested by the Department with respect to any request from the Information Commissioner's Office, or any consultation by the Department with the Information Commissioner's Office.
- 17.8. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
 - 17.8.1. the Department determines that the processing is not occasional;
 - 17.8.2. the Department determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 17.8.3. the Department determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 17.9. The Contractor shall allow for audits of its Data Processing activity by the Department or the Department's designated auditor.
- 17.10. The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 17.11. Before allowing any sub-processor to process any Personal Data related to this Contract, the Contractor must:
 - 17.11.1. notify the Department in writing of the intended sub-processor and processing;
 - 17.11.2. obtain the written consent of the Department;
 - 17.11.3. provide the Department with such information regarding the sub-processor as the Department may reasonably require.
- 17.12. The Contractor shall remain fully liable for all acts or omissions of any sub-processor.
- 17.13. The Contractor shall indemnify the Department against any liability, assessment or claim made by the Information Commissioner's Office or any other relevant Department or Agency arising out of the performance by the Contractor of its obligations under this Contract and any costs, expenses, penalty fine or interest incurred or payable by the Department in connection with any such assessment or claim.
- 17.14. The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming

part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

- 17.15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Department may on not less than thirty (30) Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

18. AMENDMENT AND VARIATION

- 18.1. No amendment or Variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Contractor shall comply with any formal procedures for amending or varying contracts which the Department may have in place from time to time.
- 18.2. In considering any amendment or Variation to this Contract, the parties shall use the Change Control Procedure as set out in Schedule 5 (Change Control Procedure).

19. ASSIGNMENT AND SUB-CONTRACTING

- 19.1. The benefit and burden of this Contract may not be assigned or Sub-Contracted in whole or in part by the Contractor without the prior written consent of the Department save as expressly set out in clause 19.2. Such consent may be given subject to any conditions which the Department considers necessary. The Department may withdraw its consent to any Sub-Contractor where it no longer has reasonable grounds to approve of the Sub-Contractor or the Sub-Contracting arrangement and where these grounds have been presented in writing to the Contractor.
- 19.2. The Contractor may enter into Sub-Contracts for the delivery of general services that indirectly enable the Contractor to perform the Services without the requirement to seek the Department's prior consent as set out in clause 19.1.
- 19.3. Where the Department has consented to the appointment of a Sub-Contractor, pursuant to clause 19.1, the Contractor shall, as soon as reasonably practicable following a request from the Department provide to the Department a copy of the Sub-Contract entered into between the Contractor and the Sub-Contractor which should pass down to the Sub-Contractor in terms which are the same or substantially similar to the provisions in this Contract as is relevant for the delivery of the Services under the Sub-Contract.
- 19.4. Where the Department has consented to an assignment pursuant to clause 19.1 the Contractor shall evidence the assignment in writing to the Department and provide a copy of the assignment document on request.
- 19.5. The Contractor shall not terminate or materially amend the terms of any Sub-Contract whose value exceeds £10,000 (ten thousand pounds) without obtaining the Department's prior written consent.
- 19.6. The Department may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the Department's rights of termination pursuant to clause 10 unless the Sub-Contractor can remedy the breach to the Department's satisfaction with 21 days of receipt by the Contractor of written notice from the Department requiring the Sub-Contract to be terminated.
- 19.7. The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 19.8. The Department accepts no liability to the Contractor in relation to a decision by the Department to consent to the appointment of a Sub-Contractor by the Department or to an assignment and the Contractor shall hold the Department harmless in relation to any such decisions.
- 19.9. If the Department believes there are:
- 19.9.1. Grounds for excluding a supplier from being a Sub-Contractor pursuant to the minimum requirements set out in the table below: or

Commercial organisations, Charities, HEIs and consultants	Schools
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<ul style="list-style-type: none"> • Does not meet with the same assessment criteria as the Contractor was subject to in respect of Parts 1 & 2 of the Selection Questionnaire; • has unmanageable conflicts of interest or reputational risk to the Department or the NPQ and NPQH Additional Support Offer; and • has unresolved performance issues on any contract they have with the Department. 	<ul style="list-style-type: none"> • is not graded Good or Outstanding for overall effectiveness by Ofsted; • has unmanageable conflicts of interest or reputational risk to the Department or the NPQ and NPQH Additional Support Offer and • has no unresolved performance issues.
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19.9.2. Compulsory grounds for excluding a Sub-Contractor pursuant to Regulation 57 of the Regulations; or

19.9.3. Non-compulsory grounds for excluding a Sub-Contractor pursuant to Regulation 57 of the Regulations;

19.10. the Department may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such a requirement.

19.11. The Department reserves the right to undertake due diligence in relation to any Sub-Contractor in accordance with clause 19.8.

20. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

20.1. This Contract shall not create any rights, under the Contracts (Rights of Third Parties) Act 1999 or otherwise, that shall be enforceable by anyone other than the Department and/or the Contractor.

21. WAIVER

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

22. FORCE MAJEURE

22.1. 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 22.3 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.

22.2. 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.

22.3. 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.

23. NOTICES

23.1. 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, or e-mail, addressed to the recipient at its registered office or its address (or such other address, or e-mail address as may be notified in writing from time to time).

- 23.2. The notice, demand or communication shall be deemed to have been duly served:
- 23.2.1. if delivered by hand, when left at the proper address for service;
 - 23.2.2. 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;
 - 23.2.3. if made by e-mail, at the time of transmission, dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message or, 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 Working Day (such times being local time at the address of the recipient).

24. DISPUTE RESOLUTION

- 24.1. The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract. This shall include escalating the dispute to a more senior level within both the Department and the Contractor with a view to reaching a settlement.
- 24.2. Any dispute not capable of resolution by the parties in accordance with the terms of clause 24 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 24.3. No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.

25. DISCRIMINATION

- 25.1. The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 25.2. The Contractor shall take all reasonable steps to secure the observance of clause 25.1 by all servants, employees or Agents of the Contractor and all Contractors and Sub-Contractors employed in the execution of the Contract.

26. LAW AND JURISDICTION

- 26.1. This Contract shall be governed by and interpreted in accordance with English Law and the parties submit to the jurisdiction of the English courts.

27. CONTINUOUS IMPROVEMENT

- 27.1. The Contractor shall adopt a policy of continuous improvement in relation to the Services pursuant to which it will regularly review with the Department, the Services and the manner in which it is providing the Services, with a view to reducing the Department's costs, and/or improving the quality and efficiency of the Services. The Contractor and the Department will provide to each other any information, which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.
- 27.2. Without limiting clause 27.4, upon a request from the Department, the Contractor shall produce a plan for improving the provision of Services and/or reducing the Charges produced by the Contractor pursuant to this clause, and reducing the Charges (without adversely affecting the performance of the Contract) during that year of the Contract (an "Continuous Improvement Plan") for the approval of the Department. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:
- 27.2.1. identifying the emergence of new and evolving technologies, which could improve the Services;
 - 27.2.2. identifying changes in behaviour by the Department that could/would result in a cost saving and a reduction in the Charges;

- 27.2.3. identifying and implementing efficiencies in the Contractor's internal processes and administration that may lead to cost savings and reductions in the Charges;
 - 27.2.4. identifying and implementing efficiencies in the way the Department interacts with the Contractor that may lead to cost savings and reductions in the Charges;
 - 27.2.5. identifying and implementing efficiencies in the Contractor's supply chain that may lead to cost savings and reductions in the Charges;
 - 27.2.6. baselining the quality of the Contractor's Services and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Contract Period; and
 - 27.2.7. measuring and reducing the sustainability impacts of the Contractor's operations and supply-chains pertaining to the Services and identifying opportunities to assist the Department in meeting its sustainability objectives.
- 27.3. Where requested, a Continuous Improvement Plan shall be submitted by the Contractor to the Department for approval within ninety (90) Working Days of the Effective Date.
- 27.4. The Department shall notify the Contractor of its approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Department's notice of rejection and of the deficiencies of the proposed Improvement Plan, the Contractor shall submit to the Department a revised Continuous Improvement Plan reflecting the changes required. Once approved by the Department.
- 27.5. Once any Improvement Plan has been approved by the Department, it shall be agreed as a Contract Change Notice in accordance with Schedule 5 (Contract Change Procedure) and:
- 27.5.1. the Contractor shall use all reasonable endeavours to provide the Services in accordance with the Continuous Improvement Plan; and
 - 27.5.2. the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Department and the Contractor) to review progress against the Continuous Improvement Plan.
- 27.6. Should the Contractor's costs in providing the Services to the Department be reduced as a result of any changes implemented as a result of a Continuous Improvement plan, all of the cost savings shall be passed on to the Department by way of a reduction in the Charges for the Services agreed in accordance with Schedule 5 (Contract Change Procedure).

28. PAYMENTS AND INVOICING

- 28.1. Except where otherwise expressly stated in the Contract the only payments to be paid by the Department 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.
- 28.2. In consideration for the provision of the Services the Department shall pay the Charges in accordance with the Schedule 2 subject to the receipt of correct invoices pursuant to Clause 28.9 being issued by the Contractor.
- 28.3. The Contractor shall submit the first invoice by 25th July 2021 and subsequent invoices shall be submitted by the 25th of the month following the month in respect to which the invoice relates, unless otherwise stated in the Contract.
- 28.4. The Department shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this paragraph, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 28.5. Except where otherwise expressly stated in Schedule 2 the Contractor shall not be entitled to increase the Charges or any rates identified in Schedule 2 throughout the Contract Period.

- 28.6. 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 Department 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.
- 28.7. Payment of the Charges by the Department shall be without prejudice to any rights the Department 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 Department by reason of such payment.
- 28.8. NOT USED.
- 28.9. Invoices shall be submitted electronically by email to accountspayable.OCR@education.gov.uk and the Department's Contract Manager by the relevant date as specified in Clause 28.3.
- 28.10. There is no postal address. Paper invoices or supporting documents will not be accepted. All supporting documents must be sent digitally along with the invoice to the email addresses at Clause 28.9.
- 28.11. An invoice is a Correctly Submitted Invoice if it is legible and includes:
- 28.11.1. the date of the invoice;
 - 28.11.2. Contractor's full name and address;
 - 28.11.3. Contract reference number;
 - 28.11.4. Purchase Order number
 - 28.11.5. the charging period;
 - 28.11.6. a detailed breakdown of the appropriate Charges including deliverables, milestones achieved (if applicable) and the information set out in paragraph 12.8 of Part 1 of Schedule 2;
 - 28.11.7. days and times worked (if applicable);
 - 28.11.8. Service Credits (if applicable); and
 - 28.11.9. VAT if applicable.
- 28.12. The Department shall not pay an invoice which is not a Correctly Submitted Invoice.
- 28.13. The Department intends to pay Correctly Submitted Invoice within 5 days of receipt. Correctly Submitted 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 228.13 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.
- 28.14. The Department shall not be responsible for any delay in payment caused by receipt of invoices which are not a Correctly Submitted Invoice and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Correctly Submitted Invoices together with an explanation of the need for correction.
- 28.15. At the end of the Contract Period the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Contract Period which have not already been invoiced to the Department. The final invoice shall be submitted not later than 30 days after the end of the Contract Period.
- 28.16. The Department shall not be obliged to pay the final invoice until the Contractor has carried out all of the Services.

- 28.17. 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.
- 28.18. If the Department disputes any amount specified in a Correctly Submitted 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 Department may withhold the disputed amount pending resolution of the dispute.
- 28.19. 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 24.

AS WITNESS the hands of the parties:

Authorised to sign for and on behalf of [REDACTED]

Signature: _____

Name in CAPITALS: _____

Position in Organisation: _____

Address in full: _____

Date: _____

Authorised to sign for and on behalf of the Secretary of State for Education

Signature: _____

Name in CAPITALS: _____

Position in Organisation: _____

Address in full: _____

Date: _____

SCHEDULE 1: PART 1 – THE SERVICES

This Call Off Contract relates to the agreed Digital delivery activity for the 2021/2022 cohorts of the National Professional Qualifications Delivery Framework only.

SECTION 2A: SPECIFICATION OF REQUIREMENTS

19 Digital Delivery

- 19.1 The Department will develop, host and manage a Central Digital Platform to:
- 19.1.1 collect key data about the teachers and school leaders who will be accessing the reformed suite of NPQs via Framework Providers.
 - 19.1.2 host advice and guidance about the NPQ programmes on offer to teachers and school leaders.
 - 19.1.3 drive funding and payment processes using data gathered both within the Departments platform as well as from the Provider.
- 19.2 The Department will provide the Provider with timely access to the participant data in order to set up user accounts and manage progress and attendance on the Provider's platform.
- 19.3 Participant data, such as TRN, name and date of birth, will be validated by Department before being shared with the Provider.
- 19.4 The Provider shall develop, host and manage a digital platform with the capability of:
- 19.4.1 hosting online course content for their NPQ programmes.
 - 19.4.2 capturing participant data to record progress throughout the learning journey and enable the export of data to the Department's Central Digital Platform.
- 19.5 The Provider will have access to the Central Digital Platform to receive key data about participants, as well as notifying the Department of the progress of participants.

Digital Delivery Standards

- 19.6 The Department follows government design principles to ensure that we develop and deliver digital experiences to the highest quality. The Provider shall meet these standards for digital elements they are hosting themselves, in accordance with Schedule 14 of the Call Off Contract.
- 19.7 The Provider must share their work with Department early and often to ensure these expectations are being met and to gain guidance where needed:
<https://www.gov.uk/guidance/government-design-principles#do-less>
- 19.8 The Provider must ensure the elements they are responsible for delivering are presented to users in a way that creates a joined up experience with the Department's Central Digital Platform, i.e. dual branding, consistent language.

Integration with the Departments Digital Service - creating an accessible, joined up service

- 19.9 The Provider must collaborate with the Department to test the shared end-to-end user journey including any points at which the Department's and the Provider's Digital Platform integrate.
- 19.10 Testing must be carried out with representative users of the service including those who are low on the digital inclusion scale and have impairments. Insight from the Provider user testing, as well as feedback from users of the live service, must be shared with Department and used to develop, resolve issues and continually improve the services.
- 19.11 The Provider will also be required to audit their compliance to a minimum of WCAG 2.1 level AA accessibility requirements and identify opportunities to improve accessibility as part of testing, feedback, and continuous improvement.
- 19.12 The Provider must publish an accessibility statement that explains how accessible the digital offering is and alternative ways users can access content that is not accessible to them. The Provider's Digital Platform shall comply with the requirements set out in Schedule 14 of the Call Off Contract.

Branding considerations and consistent language

- 19.13 Working closely with the Department the Provider is required to ensure branding and language are used consistently throughout the full service, i.e. on communications, making it clear to users who they are communicating with and keeping them orientated within the journey, regardless of the channel being used.
- 19.14 Where attachments, downloadable PDFs or print-friendly versions are provided by the Provider in addition to the HTML content, the Provider shall ensure they are accessible by having a logical structure based on tags and headings, meaningful document properties, readable body text, good colour contrast and text alternatives for images. More information on accessible PDFs is available on GOV.UK and at Microsoft.

Communications and notifications

- 19.15 Elements of the service managed by the Provider outside the Department's notifications to users must be triggered at the right place in the journey to satisfy the needs of end users for example, account creation notifications for the Contractor's platform.

Usage data and analytics

- 19.16 The Provider is required to provide the Department with data of participant progress through the service. Examples of this will include, but not exclusive to metrics on:
- 19.16.1 Participant interaction with online services;
 - 19.16.2 engagement and interaction;
 - 19.16.3 retention and churn.
- 19.17 Some of this data may/will require integration into the Provider backend platform as well as their frontend.
- 19.18 Acceptable formats and fine-grained requirements for this data will be agreed after the award to the Framework.
- 19.19 The Provider is responsible for informing the participating users that tracking data will be collected to facilitate analysis of the service and the provider.

User feedback and analysis

- 19.20 The Provider shall provide opportunities for users to give feedback on their service via digital and other channels i.e. via service support, complaints processes, phone, feedback forms.
- 19.21 The Provider shall detail their process for reviewing user feedback, ensuring issues are communicated to the Department as appropriate and resolved in a timely manner. The Provider shall set out their approach to achieve continuous service improvement in consultation with the Department.

Platform requirements and future proofing

- 19.22 Suitable assurance certification needs to be provided in the form of ISO27001 or equivalent. As a minimum the Provider shall provide evidence that it holds and thereafter maintains cyber essentials certification.
- 19.23 The Provider's Digital Platform (and that used by any Delivery Partners) shall comply with the requirements set out in Schedule 14 of the Call Off Contract and the Provider shall ensure:
- 19.23.1 the Digital Platform undergoes and passes a penetration test before its launch date and periodically thereafter for the lifetime of the platform;
 - 19.23.2 they have operational security processes in place;
 - 19.23.3 have a documented process for managing source code;
 - 19.23.4 have a documented process for changing, upgrading or deploying new versions of the software;
 - 19.23.5 provide evidence that these activities have been conducted, highlighting the risks found and mitigations applied.
- 19.24 The Provider must perform assurance processes iteratively and continuously throughout both the "implementation" and "live" periods of the platform's lifecycle. Assurance is conducted throughout the delivery phase. The Digital Service Standard encourages an Agile style of delivery where demos (rather than slide decks) of working software and prototypes are given frequently. This is a key part of our governance process and substantially reduces the burden of more formal engagements.

20. Accessibility Requirements

- 20.1 In accordance with paragraph 3.1.1 of Schedule 14 of the Call Off Contract, the Provider's Digital Platform must be compliant to a minimum of [WCAG 2.1 level AA](#) as part of meeting government accessibility requirements when designing and developing the digital offerings and related programme materials. [Understanding how to apply WCAG 2.1 standards](#) is explained in more detail on GOV.UK. The Provider shall audit their compliance with accessibility requirements and identify opportunities to improve accessibility as part of testing, feedback, and continuous improvement. The compliance audit undertaken by the Provider shall be shared with the Department.
- 20.2 The Provider must publish an accessibility statement that explains how accessible the digital offering is and alternative ways users can access content that is not accessible to

them. Accessibility statements should be reviewed and updated regularly. [Further information on accessibility statements](#) is outlined on GOV.UK.

- 20.3 The Digital Platform must be accessible on a mobile and able to be navigated using a keyboard. By default, content should be created in HTML in order to make it easier for users to stay oriented within the digital offering as well as making it easier to maintain, view on mobile devices and be accessible by screen readers.
- 20.4 Where attachments are used, downloadable PDFs or print friendly versions must be provided in addition to the HTML content, they must be accessible by having a logical structure based on tags and headings, meaningful document properties, readable body text, good colour contrast and text alternatives for images. More information on [accessible PDFs](#) is available on GOV.UK and at [Microsoft](#).
- 20.5 Where plugins are used, they shall support the use of subtitles and audio descriptions, including media players and embedded videos.

21 GDPR Compliance

- 21.1 Personal data held by the Provider or their Delivery Partners, must comply with GDPR requirements set out in clause 17 and Schedule 6 of each Call Off Contracts. The provider must ensure the obligations of data protection legislation; the General Data Protection Regulation and the Data Protection Act 2018 are adhered to at all times.
- 21.2 Where personal data is held by the Provider, it must comply with GDPR requirements, notifying users of what data is being held, who has access to it and how to change permissions on its use. Further details regarding GDPR can be found in the Framework Agreement and Call Off Contract

22 Provider's User Digital Platform

- 22.1 The Department will require the Provider to develop, host and maintain or procure a User Digital Platform that would replicate the functionality described in paragraphs 19.1 to 19.5.
 - 22.1.1 The Contractor will be paid according to the actual costs incurred in developing the User Digital Platform. Claims for related payments shall be supported by Open Book information.
 - 22.1.2 The payment for the ongoing hosting and maintenance of the User Digital Platform which has been developed will be paid for under the Framework Agreement Prices, which will be varied in accordance with the costs incurred via a Variation.
- 22.2 The requirements are as follows:
 - 22.2.1 The Provider will develop or procure a platform for a Learner Management System (LMS) with the capability of hosting learner training content;
 - 22.2.2 LMS will have the capability of capturing participant data and progress throughout the learning journey. The data capture should be real-time and enable the export of data through modern RESTful APIs as outlined in the Technology Code of Practice: <https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice> or through user interfaces provided by the Department;

22.2.3 If developing their Digital Platform, the Provider will follow government design principles to ensure that the digital experience delivers to the highest quality <https://www.gov.uk/service-manual/service-standard>.

SCHEDULE 1: PART 2 – THE CONTRACTOR’S SOLUTION



SCHEDULE 2: PART 1 – PRICING (USER DIGITAL PLATFORM ONLY)

1. Definitions

1.1 In this Schedule, the following terms shall have the meanings set out below:

“Charges”	means the charges payable by the Department for the User Digital Platform costs incurred by the Contractor as set out in Table 1;
“Paragraph”	means a paragraph of this Schedule 2: Part 1 unless expressly indicated to the contrary;
“Pricing Schedule”	means the pricing breakdown submitted by the Contractor with its framework Tender (included at Annex 1 of this Schedule 2: Part 1 Pricing);
“User Digital Platform Cost Milestone Reimbursement Payment”	means the payment made for each milestone that is completed and verified by the Department;
“Total Contract Value”	means the total value of the User Digital Platform costs to be delivered under this Call Off Contract. The Total Contract Value is stated in the table at Annex 1.

1.1. General

- 1.1. The Department shall pay the Contractor the Charges as set out in Annex 2 for delivery of the Services, based on costs as agreed in line with the submitted Pricing Schedule, subject to satisfying the Department’s payment conditions for the delivery of Services.
- 1.2. The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise in writing between the Contractor and the Department, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
- 1.3. Indexation shall not apply to the Charges.
- 1.4. Invoices shall be submitted on or before the 25th day of each month following the month in respect to which the invoice relates, except for the first Service Fee payment as set out in Paragraph 11.5. For Output Payments, the Contractor must provide supporting evidence that the Output has been completed in the form of confirmation through the MI return. The data provided will be validated and verified by the Department.
- 1.5. At any time during the Contract Period (including, for the avoidance of doubt, at any time before and/or after payment by the Department to the Contractor) the Department shall be entitled to validate any claim for payment made by the Contractor. At all times the Contractor shall provide all necessary assistance as requested by the Department (including without limitation, procuring the consent of Teachers) to enable the Department to validate any claim for payment made by the Contractor.

2. Charges to Teachers

- 2.1. Neither the Contractor nor its Agents or Sub-Contractors shall levy any charge on Teachers except as expressly permitted in advance and in writing by the Department (at its sole discretion).

3. Charges to Schools (School Contribution)

- 3.1. Neither the Contractor nor its Agents or Sub-Contractors shall levy any charge on a School except where expressly agreed in advance and in writing by the Department (at its sole discretion). For the avoidance of doubt, Schools can be charged under a Part B (School Funded NPQ) Call Off Contract that they place an Order for.

4. Recovery of Sums Due

- 4.1. Whenever under the Contract any sum of money is recoverable from the Contractor, or payable by the Contractor (including any sum which the Contractor is liable to pay to the Department in respect of any breach of the Contract), the Department may set off the sum from any sum due, or which at any later time may become any other agreement or contract with the Department or the Crown.
- 4.2. Any overpayment by either Party, whether of the Charges or of VAT or otherwise shall be the sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 4.3. The Contractor shall make any payments due to the Department without any deductions whether by way of offset, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by Department to the Contractor.
- 4.4. All payments due shall be made within a 28 days once agreed between the parties that a sum of money is recoverable, unless otherwise specified in the Contract, in cleared funds, to such bank or building society as the recipient Party may from time to time direct.
- 4.5. If the Contractor does not meet Milestones included in their User Digital Platform Call Off Contract, the Department reserves the right to recover any User Digital Platform Costs they have been paid under this Call Off Contract. The agreed sum of User Digital Platform Costs will be recovered via a credit note submitted by the Contractor to the Department.

5. Disputed Claims

- 5.1. Notwithstanding paragraph 2.6 of this Schedule 2, payment by the Department of all or any part of any Charges rendered or other claim for payment by the Contractor shall not signify approval. The Department reserves the right to verify Charges after the date of payment and subsequently to recover any sums, which have been overpaid.
- 5.2. If any part of a claim rendered by the Contractor is disputed or subject to question by the Department either before or after payment then, upon request, the Contractor shall provide such further documentary and oral evidence as the Department may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Contractor shall promptly provide such evidence in a form satisfactory to the Department.
- 5.3. If any part of a claim rendered by the Contractor is disputed or subject to question by the Department, the Department shall not withhold payment of the remainder.
- 5.4. If any fee rendered by the Contractor is paid but any part of it is disputed or subject to question by the Department and such part is subsequently agreed or determined not to have been properly payable then the Contractor shall forthwith repay such part to the Department.
- 5.5. The Department shall be entitled to deduct from sums due to the Contractor by way of offset any amounts owed to it or which are in dispute or subject to question either in respect of the fee for which payment is being made or any previous fee.

6. Adjustment of the Charges

- 6.1. The Charges may only be varied by means of a Contract Change Notice, and in accordance with the provisions of this Contract.

6.2. **NOT USED**

6.3. **NOT USED**

7. Financial Reporting and Audit

- 7.1. The Contractor shall keep or cause to be kept full and proper books of account in relation to the provision of the Services, and the entries made therein, shall be kept up-to-date at all times and shall include all such matters and things which are usually entered in books of account in the United Kingdom kept by persons or companies engaged in concerns of a similar nature in accordance with best accountancy practices.

- 7.2. Such books of account, invoices, charge out rates, time sheets, or other time recording documents kept by the Contractor in connection with the provision of the Services and all receipts, invoices, orders, contractual documentation and other documentation relating to the Services to which the Supplier is a party ("**Open Book Data**") shall be open to inspection by the Department or any persons appointed to act on the Department's behalf at any reasonable time having made prior appointment with the Contractor. The Department shall be entitled to ask for a copy of the Open Book Data or any part thereof which (subject to the prior payment of the Contractor's reasonable copying and administrative charges) the Contractor shall provide within 10 Workings Days of the Department's written request.
- 7.3. If the Department reasonably considers the Open Book Data does not accurately represent and detail sums relating to this Agreement and the Services, then the Contractor shall provide the Department with documentary evidence relating to such sums and contractual obligations.
- 7.4. During the Contract Period, and for a period of 7 years following the end of the Contract Period, the Contractor shall:
- (a) maintain and retain the Open Book Data; and
 - (b) disclose and allow the Department and/or the auditor (whether internal or external) of the Department access to the Open Book Data.
- 7.5. **NOT USED**
- 7.6. The Contractor shall co-operate fully and in a timely manner with any reasonable request from time to time of the Department or any Audit Agents and at the expense of the Contractor to provide documents, or to procure the provision of documents, relating to this Contract, and to provide, or to procure the provision of, any oral or written explanation relating to the same.
- 7.7. The Contractor shall instruct its external auditor to provide reasonable co-operation with the Audit Agents for the purposes of verifying financial information.
- 7.8. The Department shall during each audit comply with those security, sites, systems and facilities operating procedures of the Contractor that the Department deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

ANNEX 1 TO SCHEDULE 2: PART 1 – PAYMENT PROCESS (USER DIGITAL PLATFORM ONLY)

1. User Digital Platform Costs

- 1.1. Subject to the terms of the Contract, the Department shall reimburse User Digital Platform costs for the total amount of [REDACTED] in arrears on a Milestone basis as set out in Table 1.

Table 1: User Digital Platform Costs Milestone Payment Reimbursement

Table 1 User Digital Platform Costs Milestone Payment Reimbursement				
Milestone	Milestone Definition	Deadline for the Milestone to be Achieved	Date of Milestone Payment	Indicative Milestone Reimbursement Payment (£)
Milestone 1: Provider Digital Delivery Roadmap agreed	The Provider has submitted their Delivery Roadmap for the digital service and it has been agreed by the Department.	12 July 2021	On or after 25 July 2021	[REDACTED] (Ex VAT)
Milestone 2: Initial demo of prototype/ wireframe) of the learning platform shared with the DfE for quality review agreed with department.	Design and functionality being developed for the learning platform has been agreed by the department.	27 August 2021	On or after 25 September 2021	[REDACTED] (Ex VAT)
Milestone 3: API Integration with the DfE digital service complete	Provider has successfully integrated with DfE API and have confirmed with developer tests between DfE/provider that integration is working.	31 August 2021	On or after 25 November 2021	[REDACTED] (Ex VAT)
Milestone 4: Security certification and accessibility standards have been met	The provider has submitted documentation to the department confirming that they have met the security and accessibility standards set out in the contract. Where an accessibility review has taken place this should include confirmation	15 October 2021	On or after 25 November 2021	[REDACTED] (Ex VAT)

	that issues have been actioned.			
Milestone 5: Demonstration of final learning platform shared with the DfE for quality review	Final demonstration of the learning platform presented to the department for quality review. This should, where possible be the live service (or on a staging/development environment)	15 October 2021	On or after 25 November 2021	██████████ (Ex VAT)
Milestone 6: Agree licence structure and licence costs for 2021/2022 Cohorts only	Licence costs attached to the management of the User Digital Platform. Provider should offer evidence of costs (such as invoices).	28 February 2023	On or after 25 March 2023	██████████ (Ex VAT)
Milestone 7: Agree licence structure and licence costs for 2021/2022 Cohorts only	Licence costs attached to the management of the User Digital Platform. Provider should offer evidence of costs (such as invoices).	28 February 2024	On or after 25 March 2024	██████████ (Ex VAT)
Total User Digital Platform Costs				██████████

- 1.2. User Digital Platform costs are restricted to those costs detailed in Table 1 above in respect of the NPQ programme only.
- 1.3. All other costs not listed in Table 1 will not be eligible for reimbursement as part of the User Digital Platform Milestone Reimbursement Payments.
- 1.4. To receive a Milestone Reimbursement Payment for the relevant milestone, the Contractor must provide evidence to the Department that the milestone has been achieved and completed. Only when the evidence has been submitted and verified by the Department will payment be made. Once evidence has been verified that the milestone has been achieved, an invoice for the Milestone Reimbursement Payment must be submitted within 28 days.
- 1.5. If a Contractor fails to achieve a milestone by the deadline, the Contractor will not be eligible to claim the relevant Milestone Reimbursement Payment, unless agreed by the Department to extend the date for that Milestone via a contract Variation. The Contractor may then invoice for the relevant Milestone Reimbursement Payment when the Milestone is verified as being achieved by the Department.

ANNEX 2 TO SCHEDULE 2: PART 1 – CONTRACT PRICING INFORMATION (SET UP ONLY)

Not used

SCHEDULE 2: PART 2 – PERFORMANCE

1 USER DIGITAL PLATFORM MILESTONES (ONLY APPLIES TO DELIVERY CALL OFFS AWARDED WHILST THE CONTRACTOR'S USER DIGITAL PLATFORM CALL OFF CONTRACT IS STILL BEING DELIVERED)

1.1 If the Contractor's fails to achieve any of the Milestones included in a User Digital Platform Call Off Contract but at the same time is delivering the Services under a Call Off Contract other than a User Digital Platform Off Contract the Department reserves the right to apply any or all of the following in relation to the said Call Off Contract:

1.1.1 immediately require the Contractor to stop or not start any part of the Services, including delaying the Cohort Commencement Date;

1.1.2 require the Contractor to;

1.1.2.1 revise and resubmit their Delivery Plan and Implementation Plan;

1.1.2.2 reschedule any activity;

1.1.2.3 attend meetings with the Department and/or its QA Function, submit reports, report on progress, provide additional resources and take the necessary action to provide assurances to the Department that the failure to achieve the Milestone will not adversely affect the Services;

1.1.3 treat the failure to meet the Milestone as a Serious Breach and apply clauses 10.3 or 10.5.1;

1.2 Time is of the essence in relation to the Milestones included in the User Digital Platform Call Off Contract and so the failure to achieve a Milestone Date will also entitle the Department to terminate this Contract for Serious Breach.

1.3 In the event the Department terminates this Call Off Contract, the Contractor shall assist and support the Department to ensure an orderly and smooth transfer of Teachers to other contractors or providers.

2 PERFORMANCE MANAGEMENT

2.1 The Department shall monitor the Contractor's performance and progress against the Service Specification (Schedule 1: Part 1), the Contractor's Solution (Schedule 1: Part 2), the Implementation Plan (Schedule 7), and Pricing (Annex 1 of Schedule 2: Part 1) within a Reporting Period and during performance review meetings. The Contractor shall cooperate with the Department in this regard and provide any information and evidence reasonably required by the Department within five (5) Working Days of a request being received.

2.2 The Contractor shall appoint a named Performance Manager who will cooperate with the Department to ensure that the Services are delivered as specified in the Contract and that milestones are achieved.

2.3 The purpose of the performance review meetings is to encourage an open and regular dialogue between the Parties. The Parties shall review performance, discuss opportunities for continuous improvement, and address any complaints or persistent problems encountered.

2.4 Performance reviews shall be documented. The Contractor shall provide any information and data requested by the Department to facilitate the reviews and arrange, where necessary, access to any of Contractor Premises or delivery locations, including those operated by Sub-Contractors.

2.5 The Department may instruct the Contractor to take appropriate remedial action where the Department reasonably considers that the Implementation Plan and/or a Performance Improvement Plan is not being complied with, and the Contractor shall take such remedial action.

2.6 NOT USED

2.7 The Contractor shall ensure that all systems and processes used for the monitoring and recording

of performance are robust.

Contractor Management Information (MI) Requirements

- 2.8 The Department intends, wherever it can, to capture and collate information through its IT system(s) (please refer to the management information and digital requirements as set out in the Service Specification for more detail). However, the Department does reserve the right to make reasonable requests for information (at no additional charge) from the Contractor including ad-hoc requests for information from time to time.
- 2.9 The Contractor shall supply Management Information and Data relevant to the delivery of the Services to the Department, using formats and to timescales as detailed in the Specification or as are otherwise notified to the Contractor by the Department.
- 2.10 The Department shall be entitled to amend the Reporting Period and format in respect of any or all Management Information or waive the requirement for any aspect of the Management Information to be reported upon by giving the Contractor not less than one (1) Months' notice in writing.

3 SERVICE CREDITS – NOT USED

ANNEX A TO SCHEDULE 2: PART 2 – KEY PERFORMANCE INDICATORS

Not used

SCHEDULE 3: ADDITIONAL CLAUSES

1. Departmental Security Standards

“BPSS”

“Baseline Personnel Security Standard”

a level of security clearance described as pre-employment checks in the National Vetting Policy. Further information can be found at:

<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>

“CCSC”

“Certified Cyber Security Consultancy”

is NCSC's approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. This approach builds on the strength of CLAS and certifies the competence of Contractors to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors. See website:

<https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy>

“CCP”

“Certified Professional”

is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors. See website:

<https://www.ncsc.gov.uk/scheme/certified-professional>

“CC”

“Common Criteria”

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.

“CPA”

“Commercial Product Assurance”

[formerly called “CESG Product Assurance”]

is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry. See website:

<https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>

“Cyber Essentials”

“Cyber Essentials Plus”

Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.

There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers:

<https://www.iasme.co.uk/apply-for-self-assessment/>

"Data"	shall have the meanings given to those terms by the GDPR
"Data Controller"	
"Data Processor"	
"Personal Data"	
"Sensitive Personal Data"	
"Data Subject", "Process" and "Processing"	
"Department's Data"	is any data or information owned or retained in order to meet departmental business objectives and tasks, including:
"Department's Information"	<ul style="list-style-type: none"> (a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> (i) supplied to the Contractor by or on behalf of the Department; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Department is the Data Controller;
"Department"	means the Department for Education
"Department"	
"Departmental Security Standards"	means the Department's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
"Digital Marketplace / GCloud"	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.
"FIPS 140-2"	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.
General Data Protection Regulation (GDPR)	replaces Data Protection Act clauses for use in contracts that are live on or after 25 ^h May 2018.
"Good Industry Practice"	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.
"Industry Good Practice"	

“Good Industry Standard”	
“Industry Good Standard”	means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
“GSC”	
“GSCP”	means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: https://www.gov.uk/government/publications/government-security-classifications
“HMG”	means Her Majesty’s Government
“ICT”	means Information and Communications Technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
“ISO/IEC 27001” “ISO 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	is the International Standard describing for Business Continuity
“IT Security Health Check (ITSHC)”	
“IT Health Check (ITHC)”	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.
“Penetration Testing”	
“Need-to-Know”	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.
“NCSC”	The National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Department for Information Assurance. The NCSC website is https://www.ncsc.gov.uk
“OFFICIAL”	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.
“OFFICIAL-SENSITIVE”	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.

“Secure Sanitisation”

Secure sanitisation is the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. Some forms of sanitisation will allow you to re-use the media, while others are destructive in nature and render the media unusable. Secure sanitisation was previously covered by “Information Assurance Standard No. 5 - Secure Sanitisation” (“IS5”) issued by the former CESG. Guidance can now be found at:

<https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>

The disposal of physical documents and hardcopy materials advice can be found at:

<https://www.cpni.gov.uk/secure-destruction>

“Security and Information Risk Advisor”

“CCP SIRA”

“SIRA”

the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also:

<https://www.ncsc.gov.uk/articles/about-certified-professional-scheme>

“SPF”

“HMG Security Policy Framework”

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.

<https://www.gov.uk/government/publications/security-policy-framework>

“Tailored Assurance”

[formerly called “CTAS”, or,

“CESG Tailored Assurance”]

is an ‘information assurance scheme’ which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector Departments procuring IT systems, products and services, ranging from simple software components to national infrastructure networks.

<https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology>

- 1.1. The Contractor shall comply with Departmental Security Standards for Contractors, which include but are not constrained to the following clauses;
- 1.2. As the Contractor will be handling 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 May 2016, 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.
- 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).

- 1.4. The Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.5. 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).
- 1.6. 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.
- 1.7. Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- 1.8. 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 1.9 and 1.10 below.
- 1.9. 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 FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.10. 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 FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.11. Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- 1.12. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 1.13. 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 and accounted for in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons,

such as a Storage Area Network (SAN) or shared backup tapes, then the 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.

- 1.14. Access by Contractor or Sub-Contractor staff to Departmental Data shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Contractor or Sub-Contractor staff must complete this process before access to Departmental Data is permitted.
- 1.15. All Contractor or Sub-Contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 1.16. The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the Contractor will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.17. Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, or any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- 1.18. The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using a NCSC 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.
- 1.19. The Contractor or Sub-Contractors providing the service will provide the Department with full details of any storage of Departmental Data outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management, support or development 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.
- 1.20. The Department reserves the right to audit the Contractor or Sub-Contractors providing the Services within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any Sub-Contractors, compliance with the clauses contained in this Section.
- 1.21. 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.
- 1.22. The Contractor and Sub-Contractors shall undergo appropriate security assurance activities as determined by the Department. Contractor and Sub-Contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation such as completing the Department Security Assurance Model (DSAM) process or the Business Service Assurance Model (BSAM). This will include obtaining any necessary professional security resources required to support the Contractor and Sub-Contractor's security assurance activities such as: a NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA).

SCHEDULE 4: FINANCIAL DISTRESS

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Guarantee Criteria”** In respect of the latest statutory accounts shall demonstrate that the Contractor or Guarantor has:
- a current ratio (being current assets divided by current liabilities) of one or more; and
 - an acid test ratio (being current assets less stock divided by current liabilities) of one or more; and
 - a tangible net worth (being total assets less total intangible fixed assets less total liabilities) of more than zero.

2 FINANCIAL STANDING

2.1 If during the Contract Period the Contractor does not meet any of the Guarantee Criteria, at the Departments discretion, the Contractor shall ensure that:

- (a) an Affiliate of the Contractor which at the relevant time and thereafter meets all the Guarantee Criteria shall become a Guarantor and shall provide a Guarantee in the form set out in Framework Agreement, Schedule 9 (Guarantee): or
- (b) in the event that a Group Company is not able to meet the Guarantee Criteria the Contractor shall provide suitable alternative security in the form of:
 - (i) an Association of British Insurers (ABI) Model Form of Guarantee Bond or equivalent bond to the Department to a value of £2,000,000 (Two Million Pounds); or
 - (ii) an alternative guarantee, the provision of funds or reserves by a third party under guarantee, cash, deposit or escrow account as the Department may approve (such approval not to be unreasonably withheld or delayed).

2.2 The Contractor shall:

- (a) regularly monitor compliance with the Guarantee Criteria; and
- (b) promptly notify the Department in writing following the occurrence of a Financial Distress Event or Key Sub-Contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-Contractor Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Contractor first becomes aware of the Financial Distress Event, the Key Sub-Contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-Contractor Financial Distress Event).

3 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 In the event of:

- (a) the Contractor not meeting the Guarantee Criteria or providing a Guarantor that meets the Guarantee Criteria, or providing alternative security as set out in paragraph 2.1(b);
- (b) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Contractor, or the Guarantor or any Key Sub-Contractor;
- (c) the Contractor, the Guarantor or any Key Sub-Contractor committing a material breach of covenant to its lenders;
- (d) a Key Subcontractor notifying the Department that the Contractor has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or

- (e) any of the following:
 - (i) commencement of any litigation against the Contractor, the Guarantor or any Key Sub-Contractor with respect to financial indebtedness greater than £5,000,000 million (Five Million Pounds) or obligations under a service contract with a Total Contract Value greater than £5,000,000 million (Five Million Pounds) and which is reasonably likely to be adversely determined;
 - (ii) non-payment by the Contractor, the Guarantor or any Key Sub-Contractor of any material financial indebtedness;
 - (iii) any material financial indebtedness of the Contractor, the Guarantor or any Key Sub-Contractor becoming due as a result of an event of default; or
 - (iv) the cancellation or suspension of any material financial indebtedness in respect of the Contractor, the Guarantor or any Key Sub-Contractor,

in each case which the Department reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement;

then, immediately upon notification of the Financial Distress Event (or if the Department becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Contractor), the Contractor shall have the obligations and the Department shall have the rights and remedies as set out in paragraphs 3.2 to 3.3.

3.2 The Contractor shall (and shall procure that the Guarantor and/or any relevant Key Sub-Contractor shall):

- (a) at the request of the Department, meet the Department as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Department may permit and notify to the Contractor in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and
- (b) where the Department reasonably believes (taking into account the discussions and any representations made under paragraph 3.3) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
 - (i) submit to the Department a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Department may permit and notify to the Contractor in writing); and
 - (ii) provide such financial information relating to the Contractor or the Guarantor as the Department may reasonably require.

3.3 The Contractor shall:

- (a) on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;
- (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 3.3(a), submit an updated Financial Distress Service Continuity Plan to the Department; and
- (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.4 Where the Contractor reasonably believes that the relevant Financial Distress Event under paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Department and the Parties may agree that the Contractor shall be relieved of its obligations under paragraph 3.3.

4 TERMINATION RIGHTS

The Department shall notify the Contractor in writing of its intention to terminate this Contract under clause 10 (Termination) following a period of 30 days to allow the Contractor an opportunity to remedy the default to the Department's satisfaction and at no cost to the Department, if:

- (a) the Contractor fails to notify the Department of a Financial Distress Event in accordance with paragraph 2.3(b);
- (b) the Contractor fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.3(c).

SCHEDULE 5 – CHANGE CONTROL PROCEDURE

1 INTRODUCTION

- 1.1 This Schedule 5 sets out the Change Control Procedure to be used by the Department and the Contractor to effect changes to this Contract.

2 PRINCIPLES

- 2.1 The Parties acknowledge that minor changes to the Contract may be necessary to reflect operational and administrative procedures during the Contract Period and that such minor changes may be agreed in writing between the Parties' respective contract managers.
- 2.2 The Contractor shall use reasonable endeavours to incorporate minor changes requested by the Department 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.
- 2.3 Either Party may request a Variation provided that such Variation does not amount to a material change. For the avoidance of doubt, the Contractor must request a Variation in the event it is unable or wishes to change its method of delivery or Service Proposals.
- 2.4 The Contractor must request a Variation where it anticipates not delivering or is not delivering the Services or a part of the Services on an ongoing basis for a period that exceeds 5 (five) Business Days.
- 2.5 The Department and the Contractor shall conduct discussions relating to proposed changes to this Contract in good faith. Neither party shall unreasonably withhold or delay consent to the other party's proposed changes.
- 2.6 Until such time as a Change Control Notice (CCN) has been signed by both parties, the Contractor shall continue to provide the Services in accordance with this Contract.
- 2.7 Any work undertaken in connection with any proposed change to this Contract by the Contractor, its Sub-Contractors or Agents (other than that which has previously been agreed in accordance with the provisions of paragraph 2.5 of this Schedule 5) shall be undertaken entirely at the expense and liability of the Contractor unless otherwise agreed between the Department and the Contractor in advance.
- 2.8 Any discussions, negotiations or other communications which may take place between the parties in connection with any proposed change to this Contract, including but not limited to the submission of any written communications, prior to the signing by both parties of the relevant CCN, shall be without prejudice to the rights of either party.
- 2.9 The pricing of Variations shall be in accordance with Part 1 of Schedule 2

3 PROCEDURE

- 3.1 Should either party wish to amend this Contract, that party's Contract Manager shall submit a draft CCN in the format at Annex 1 to this Schedule 5 for discussion detailing the proposed change to the other party's Contract Manager.
- 3.2 Discussion between the parties following the submission of a draft CCN shall result in either:
- 3.2.1. no further action being taken on that draft CCN; or
 - 3.2.2. agreement between the parties on the changes to be made to Contract (including agreement on the date upon which the changes are to take effect (the "effective date")), such agreement to be expressed in the form of proposed revisions to the text of the relevant parts of this Contract.
- 3.3 Where agreement is reached in accordance with paragraph 3.2.2, the party submitting the draft CCN shall prepare the final CCN for execution by both parties. The final CCN, the content of

which has been agreed between the parties in accordance with paragraph 3.2.2 of this Schedule 5, shall be uniquely identified by a sequential number allocated by the Department.

- 3.4 Two (2) copies of each CCN shall be signed by the Contractor and submitted to the Department not less than ten (10) Working Days prior to the effective date agreed in accordance with paragraph 3.2.2 of this Schedule 5.
- 3.5 Subject to the agreement reached in accordance with paragraph 3.2.2 of this Schedule 5 remaining valid, the Department shall sign both copies of the approved CCN within five (5) Working Days of receipt by the Department. Following signature by the Department, one (1) copy of the signed CCN shall be returned to the Consultant by the Department.
- 3.6 A CCN signed by both parties shall constitute a valid variation or amendment to the Contract for the purposes of clause 18.2 of the Contract.
- 3.7 The Department may at its absolute discretion reject any request for a Variation proposed by the Contractor.

ANNEX 1 TO SCHEDULE 5 - CONTRACT CHANGE NOTE PRO FORMA

Contract Change Note for the Contract Change Procedure

Contract Reference Number: [to be inserted post award]
Sequential Number: [to be allocated by the Department's Framework Manager]
Title: [CCN title]
Originator: [the Department / the Contractor]
Date change first proposed: [date]
Number of pages attached: [pages]

WHEREAS the Contractor and the Department entered into a User Digital Platform Call Off Contract for the supply of the National Professional Qualifications Delivery Framework dated [date] and now wish to amend that Contract;

Reason for proposed change

[Party proposing change to complete]

Full details of proposed change

[Party proposing change to complete]

Details of likely impact, if any, of proposed change on other aspects of the Call Off Contract

[Party proposing change to complete]

IT IS AGREED as follows:

1. With effect from [date] it is proposed that the Call Off Contract shall be amended as set out below:
[Details of the amendments to the Call Off Contract to be inserted here – to include the explicit changes required to the text in order to effect the change, i.e. clause/Schedule/paragraph number, required deletions and insertions etc.]
2. Save as herein amended, all other terms and conditions of the Call Off Contract inclusive of any previous CCNs shall remain in full force and effect.
3. The amendments shall be made by way of a Deed of Variation in accordance with clause 3.1 – 3.7 of this Call Off Contract.

Signed for and on behalf of [the Contractor]

By

Name

Title

Date

Signed for and on behalf of the Department

By

Name

Title

Date

SCHEDULE 6: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Department is the Controller and the Contractor is the Processor in accordance with clause 17
Subject matter of the processing	The processing is needed in order to ensure: <ol style="list-style-type: none">a) that the Contractor can effectively deliver the contract to provide the design and delivery of the National Professional Qualifications Delivery Framework;b) that the Department can effectively manage the delivery of the Contract by the Contractor.
Duration of the processing	The processing will take place throughout the lifetime of the contract.
Nature and purposes of the processing	<p><u>Legal Basis for Processing:</u></p> <p>(i) Personal Data is shared and processed on the legal basis that the processing is necessary for the performance of a task in the public interest pursuant to Section 14 of the Education Act 2002.</p> <p>(ii) Personal Data shared for the purposes of the National Professional Qualifications Delivery Framework, is shared and processed on the basis that the Data Subject has given consent to the processing.</p> <p><u>Nature for Processing:</u></p> <p>Collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) related to Participants to enable the recruitment, design, delivery, monitoring and evaluation of programme impacts and outcomes.</p> <p><u>Purpose for Processing:</u></p> <p>The contractor has an obligation to process data in the nature outlined above in order to fulfil the contractual requirements.</p> <p><u>Frequency of Sharing:</u></p> <p>Data will be shared with the Controller on a monthly basis, in accordance with the provisions set out in Part 2 of Schedule (Performance)</p>

	<p><u>Method and Format of Transferring the Data:</u></p> <p>Personal Data of <u>all</u> qualification/NPQH Additional Support Offer Participants will be transferred from the Processor to the Controller in accordance with the following process[exact process to the included at contract fine-tuning stage]</p>
Type of Personal Data being Processed	<p>The following Personal Data will be collected:</p> <ol style="list-style-type: none"> 1 Lead Provider 2 URN of the Lead Provider (if applicable) 3 Delivery Partner 4 URN of the Delivery Partner (if applicable) 5 Purchase order number 6 Teacher Reference Number (TRN) 7 Cohort 8 First Names 9 Surname 10 Previous surname 11 Date of Birth 12 Ethnicity 13 Funded teacher or self funded teacher 14 Method of call off for self funded teacher 15 School URN 16 School name 17 E-mail Address of School contact 18 Qualification Type / Support Offer 19 Qualification / Support Offer Start Date 20 Confirmation the Teacher is still on the course 21 Confirmation if the Teacher has Withdrawn 22 Withdrawal Date (if applicable) 23 Reason for Withdrawal (if applicable) 24 Confirmation if the Teacher has Deferred 25 Deferral Date (if applicable) 26 Reason for Deferral (if applicable) 27 Length of deferral 28 Restart Date (if previously deferred) 29 Qualification/Support Offer End Date 30 Confirmation if the Teacher is on track to complete participation metric 31 Date of assessment submission 32 Date of assessment completion 33 Metric 1 Outcome 34 Metric 2 Outcome 35 Outcome of Qualification 36 Satisfaction Survey Completion
Categories of Data Subject	NPQ and NPQH Additional Support Offer Participants

<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Data will be retained for 6 years after the end of the term. At the end the data retention period, 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 and accounted for in accordance with the current HMG policy using a NCSC approved product or method.</p>
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SCHEDULE 7: IMPLEMENTATION PLAN – NOT USED FOR DELIVERY

Not used

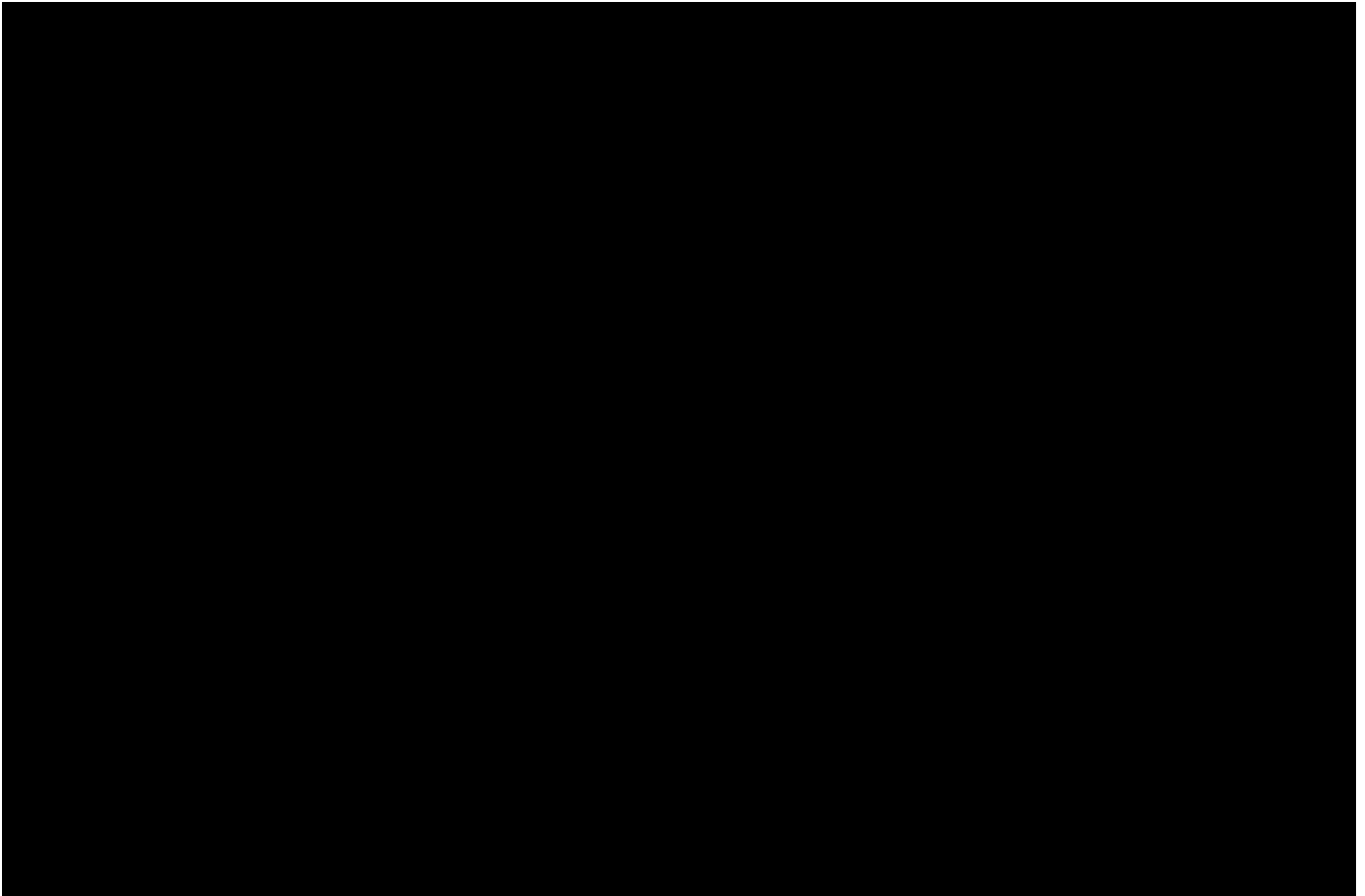
SCHEDULE 8 QUALITY ASSURANCE

Not used

SCHEDULE 9: KEY PERSONNEL AND SUB-CONTRACTORS

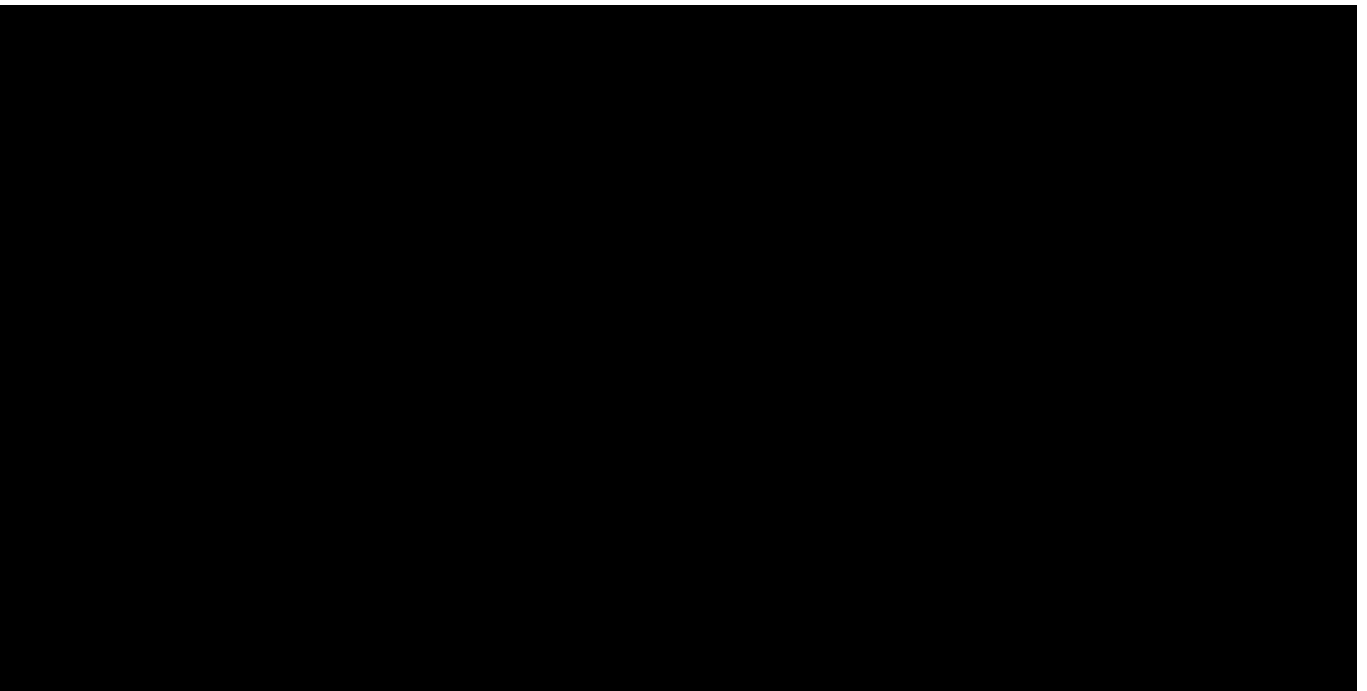
Key Personnel

The individuals listed in the table below are Key Personnel:


A large black rectangular box redacting the content of the table for Key Personnel.

Key Sub-Contractors

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

A large black rectangular box redacting the content of the table for Key Sub-Contractors.

SCHEDULE 10: COMMERCIALLY SENSITIVE INFORMATION

- 1 The Department acknowledges that the Contractor has requested that the following information be treated as Commercially Sensitive Information;

- 2 The Department will consult with the Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.
- 3 The Department reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA as set out at clause 13 of this Contract.
- 4 The Department will automatically publish all information provided by the Contractor not identified in this Schedule as constituting Commercially Sensitive Information provided that it satisfies the requirements of the FOIA.
- 5 The Department reserves the right to determine whether any information provided in this Schedule does constitute Commercially Sensitive Information prior to publication.

SCHEDULE 11 - SERVICE CONTINUITY PLAN

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Business Continuity Plan”	has the meaning given in paragraph 4;
“Business Continuity Services”	has the meaning given in paragraph 4;
“Department”	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: Government Department; or Non-Ministerial Department.
“Disaster”	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of 3 months or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
“Disaster Recovery Plan”	has the meaning given in paragraph 5.3;
“Disaster Recovery Services”	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
“Disaster Recovery System”	the system identified by the Contractor in the Contractor Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
“Insolvency Continuity Plan”	has the meaning given in paragraph 6.2.
“Related Service Provider”	any person who provides services to the Department in relation to this Agreement from time to time;
“Review Report”	has the meaning given in paragraphs 7.2 to 7.5;
“Service Continuity Plan”	means the plan prepared pursuant to paragraph 0 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;

2 SERVICE CONTINUITY PLAN

2.1 Within 40 Working Days from the Contract Date the Contractor shall prepare and deliver to the Department for the Department’s written approval a Service Continuity Plan, which shall detail the processes and arrangements that the Contractor shall follow to:

ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Contractor, any Key Sub-Contractor and/or any Contractor Group member); and

the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

be divided into four parts:

Part A which shall set out general principles applicable to the Service Continuity Plan;

Part B which shall relate to business continuity (the “**Business Continuity Plan**”);

Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”);

Part D which shall relate to an Insolvency Event of the Contractor, any Key Sub-Contractors and/or any Contractor Group member (the “**Insolvency Continuity Plan**”); and

unless otherwise required by the Department in writing, be based upon and be consistent with the provisions of paragraphs 3, 4, 5 and 6.

- 2.3 Following receipt of the draft Service Continuity Plan from the Contractor, the Department shall:
- review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
 - notify the Contractor in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Department.
- 2.4 If the Department rejects the draft Service Continuity Plan:
- the Department shall inform the Contractor in writing of its reasons for its rejection; and
 - the Contractor shall then revise the draft Service Continuity Plan (taking reasonable account of the Department's comments) and shall re-submit a revised draft Service Continuity Plan to the Department for the Department's approval within 20 Working Days of the date of the Department's notice of rejection. The provisions of paragraph 0 and this paragraph 0 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3 SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1 Part A of the Service Continuity Plan shall:

- set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;

- provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Department by a Related Service Provider;

- contain an obligation upon the Contractor to liaise with the Department and (at the Department's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;

- detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Department and any of its other Related Service Providers in each case as notified to the Contractor by the Department from time to time;

- contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Department;

- contain a risk analysis, including:

- failure or disruption scenarios and assessments and estimates of frequency of occurrence;

- identification of any single points of failure within the Services and processes for managing the risks arising therefrom;

- identification of risks arising from the interaction of the Services with the Services provided by a Related Service Provider;

identification of risks arising from an Insolvency Event of the Contractor, any Key Sub-Contractors and/or Contractor Group member; and

a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;

provide for documentation of processes, including business processes, and procedures;

set out key contact details (including roles and responsibilities) for the Contractor (and any Sub-Contractors) and for the Department;

identify the procedures for reverting to “normal service”;

set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;

identify the responsibilities (if any) that the Department has agreed it will assume in the event of the invocation of the Service Continuity Plan; and

provide for the provision of technical advice and assistance to key contacts at the Department as notified by the Department from time to time to inform decisions in support of the Department’s business continuity plans.

3.2 The Service Continuity Plan shall be designed so as to ensure that:

the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;

the adverse impact of any Disaster; service failure; an Insolvency Event of the Contractor, any Key Sub-Contractor and/or any Contractor Group member; or disruption on the operations of the Department, is minimal as far as reasonably possible;

it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and

there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Contractor Group structure.

3.4 The Contractor shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Contractor of this Agreement.

4 SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY

PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Department expressly states otherwise in writing:

the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and

the steps to be taken by the Contractor upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

address the various possible levels of failures of or disruptions to the Services;

set out the Services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);

specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and

clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY

PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Contractor ensures continuity of the business operations of the Department supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
- the technical design and build specification of the Disaster Recovery System;
 - details of the procedures and processes to be put in place by the Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - data centre and disaster recovery site audits;
 - backup methodology and details of the Contractor's approach to data back-up and data verification;
 - identification of all potential disaster scenarios;
 - risk analysis;
 - documentation of processes and procedures;
 - hardware configuration details;
 - network planning including details of all relevant data networks and communication links;
 - invocation rules;
 - Service recovery procedures; and
 - steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
 - any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
 - details of how the Contractor shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - access controls to any disaster recovery sites used by the Contractor in relation to its obligations pursuant to this Schedule; and
 - testing and management arrangements.

6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

- 6.1 The Insolvency Continuity Plan shall be designed by the Contractor to permit continuity of the business operations of the Department supported by the Services through continued provision of

the Services following an Insolvency Event of the Contractor, any Key Sub-Contractor and/or any Contractor Group member with, as far as reasonably possible, minimal adverse impact.

6.2 The Insolvency Continuity Plan shall include the following:

communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Contractor Personnel, Key Sub-Contractor personnel and Contractor Group member personnel;

identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Contractor, Key Sub-Contractors and Contractor Group members where failure of those dependencies could reasonably have an adverse impact on the Services;

plans to manage and mitigate identified risks;

details of the roles and responsibilities of the Contractor, Key Sub-Contractors and/or Contractor Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;

details of the recovery team to be put in place by the Contractor (which may include representatives of the Contractor, Key Sub-Contractors and Contractor Group members); and

sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Contractor.

7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN

7.1 The Contractor shall review and update the Service Continuity Plan (and the risk analysis on which it is based):

on a regular basis and as a minimum once every 6 months;

within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to paragraph 0;

within 14 days of a Financial Distress Event;

within 30 days of a Corporate Change Event; and

where the Department requests any additional reviews (over and above those provided for in paragraphs 0 to 0) by notifying the Contractor to such effect in writing, whereupon the Contractor shall conduct such reviews in accordance with the Department's written requirements. Prior to starting its review, the Contractor shall provide an accurate written estimate of the total costs payable by the Department for the Department's approval. The costs of both Parties of any such additional reviews shall be met by the Department except that the Contractor shall not be entitled to charge the Department for any costs that it may incur above any estimate without the Department's prior written approval.

7.2 Each review of the Service Continuity Plan pursuant to paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Contractor within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Department shall reasonably require. The Contractor shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Department a report (a "**Review Report**") setting out:

the findings of the review;

any changes in the risk profile associated with the Services; and

the Contractor's proposals (the "**Contractor's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Contractor can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

7.3 Following receipt of the Review Report and the Contractor's Proposals, the Department shall:

review and comment on the Review Report and the Contractor's Proposals as soon as reasonably practicable; and

notify the Contractor in writing that it approves or rejects the Review Report and the Contractor's Proposals no later than 20 Working Days after the date on which they are first delivered to the Department.

7.4 If the Department rejects the Review Report and/or the Contractor's Proposals:

the Department shall inform the Contractor in writing of its reasons for its rejection; and

the Contractor shall then revise the Review Report and/or the Contractor's Proposals as the case may be (taking reasonable account of the Department's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Contractor's Proposals to the Department for the Department's approval within 20 Working Days of the date of the Department's notice of rejection. The provisions of paragraph 0 and this paragraph 0 shall apply again to any resubmitted Review Report and Contractor's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

7.5 The Contractor shall as soon as is reasonably practicable after receiving the Department's approval of the Contractor's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Contractor's Proposals. Any such change shall be at the Contractor's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

8 TESTING OF THE SERVICE CONTINUITY PLAN

8.1 The Contractor shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 70, the Department may require the Contractor to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Department considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.

8.2 If the Department requires an additional test of the Service Continuity Plan, it shall give the Contractor written notice and the Contractor shall conduct the test in accordance with the Department's requirements and the relevant provisions of the Service Continuity Plan. The Contractor's costs of the additional test shall be borne by the Department unless the Service Continuity Plan fails the additional test in which case the Contractor's costs of that failed test shall be borne by the Contractor.

8.3 The Contractor shall undertake and manage testing of the Service Continuity Plan in full consultation with the Department and shall liaise with the Department in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Department in this regard. Each test shall be carried out under the supervision of the Department or its nominee.

8.4 The Contractor shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Department. Copies of live test data used in any such testing shall be (if so required by the Department) destroyed or returned to the Department on completion of the test.

- 8.5 The Contractor shall, within 20 Working Days of the conclusion of each test, provide to the Department a report setting out:
- the outcome of the test;
 - any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
 - the Contractor's proposals for remedying any such failures.
- 8.6 Following each test, the Contractor shall take all measures requested by the Department, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Contractor, at no additional cost to the Department, by the date reasonably required by the Department and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Contractor of any of its obligations under this Agreement.
- 8.8 The Contractor shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Department.

9 INVOCATION OF THE SERVICE CONTINUITY PLAN

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Contractor shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Department promptly of such invocation. In all other instances the Contractor shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Department.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Contractor:
- where an Insolvency Event of a Key Sub-Contractor and/or Contractor Group member (other than the Contractor) could reasonably be expected to adversely affect delivery of the Services; and/or
 - where there is an Insolvency Event of the Contractor and the insolvency arrangements enable the Contractor to invoke the plan;

SCHEDULE 12 – BREAKAGE COSTS

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Applicable Contractor Personnel”	<p>any Contractor Personnel who:</p> <ul style="list-style-type: none">(i) at the Termination Date:<ul style="list-style-type: none">a) are employees of the Contractor;b) are Dedicated Contractor Personnel;c) have not transferred (and are not in scope to transfer at a later date) to the Department or the Replacement Supplier as a result of the operation of TUPE; and(ii) are dismissed or given notice of dismissal by the Contractor within:<ul style="list-style-type: none">d) 40 Business Days of the Termination Date; ore) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and(iii) have not resigned or given notice of resignation prior to the date of their dismissal by the Contractor; and(iv) the Contractor can demonstrate to the satisfaction of the Department:<ul style="list-style-type: none">a) are surplus to the Contractor's requirements after the Termination Date notwithstanding its obligation to provide services to its other Departments;b) are genuinely being dismissed for reasons of redundancy; andc) have been selected for redundancy by the Contractor on objective grounds other than the fact that the Contractor is entitled to reimbursement under this provision in respect of such employees;
“Assets”	<p>means all assets and rights used by the Contractor to provide the Services in accordance with this Contract but excluding any assets belonging to the Department;</p>
“Breakage Costs Payment”	<p>an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with paragraph 2;</p>
“Contract Breakage Costs”	<p>the amounts payable by the Contractor to its Key Sub-Contractors or other third parties (as applicable) for terminating all relevant Key Sub-Contracts as a direct result of the early termination of this Contract;</p>
“Dedicated Contractor Personnel”	<p>all Contractor Personnel then assigned to the Services or any part of the Services. If the Contractor is unsure as to whether Contractor Personnel are or should be regarded as so assigned, it shall consult with the Department whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part</p>

of the Services;

“Former Contractor”	a contractor supplying services to the Department before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such Contractor
“Redundancy Costs”	<p>the total sum of any of the following sums paid to Applicable Contractor Personnel, each amount apportioned between the Contractor and the Department based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <p>(a) any statutory redundancy payment; and</p> <p>(b) in respect of an employee who was a Transferring Former Contractor Employee any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Contractor as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Contractor as a result of the operation of TUPE;</p>
“Relevant Transfer”	a transfer of employment to which TUPE applies.
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.
“Request for Estimate”	a written request sent by the Department to the Contractor, requiring that the Contractor provide it with an accurate estimate of the Breakage Costs Payment that would be payable if the Department exercised its right under Clause 25.11 (Termination) to terminate this Contract for convenience on a specified Termination Date;
“Termination Estimate”	has the meaning given in paragraph 8.2;
“Transferring Former Contractor Employees”	in relation to a Former Contractor, those employees of the Former Contractor to whom TUPE will apply on the Relevant Transfer Date; and

2 BREAKAGE COSTS PAYMENT

- 2.1 The Contractor may recover through the Breakage Costs Payment only those costs incurred by the Contractor directly as a result of the termination of this Contract which:
- (a) would not have been incurred had this Contract continued until expiry of the Initial Contract Period, or in the event that the Contract Period has been extended, the expiry of the Extension Period;
 - (b) are unavoidable, proven, reasonable, and not capable of recovery;
 - (c) are incurred under arrangements or agreements that are directly associated with this Contract;
 - (d) are not Contract Breakage Costs relating to contracts or Sub-Contracts with Affiliates of the Contractor; and
 - (e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

- 2.2 The Breakage Costs Payment shall not exceed the lower of:
- (a) the relevant limit set out in Annex 1 (Maximum Breakage Costs); and
 - (b) 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

- 2.3 The Department shall not be liable under this Schedule for any costs associated with Contractor Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.
- 2.4 Where the Contractor can demonstrate that a member of Contractor Personnel will be made redundant following termination of this Contract, but redeployment of such person is possible and would offer value for money to the Department when compared with redundancy, then the Department shall pay the Contractor the actual direct costs incurred by the Contractor or its Sub-Contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Contractor Personnel.

Contract Breakage Costs

- 2.5 The Contractor shall be entitled to Contract Breakage Costs only in respect of Sub-Contracts which:
- (a) are not assigned or novated to a Replacement Supplier at the request of the Department); and
 - (b) the Contractor can demonstrate:
 - (i) are surplus to the Contractor's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other Departments; and
 - (ii) have been entered into by it in the ordinary course of business.
- 2.6 The Contractor shall seek to negotiate termination of any Sub-Contracts with the relevant Sub-Contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
- 2.7 Except with the prior written agreement of the Department, the Department shall not be liable for any costs (including cancellation or termination charges) that the Contractor is obliged to pay in respect of:
- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Contractor premises which may arise as a consequence of the termination of this Contract; and/or
 - (b) Assets not yet installed at the Termination Date.

3 MITIGATION OF CONTRACT BREAKAGE COSTS AND REDUNDANCY COSTS AND UNRECOVERED COSTS

- 3.1 The Contractor agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs and Redundancy Costs by:
- (a) the appropriation of Assets, employees and resources for other purposes;
 - (b) at the Department's request, assigning any Sub-Contracts to the Department or a third party acting on behalf of the Department; and
 - (c) in relation to Sub-Contracts that are not to be assigned to the Department or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

- 3.2 If Assets, employees and resources can be used by the Contractor for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, and Redundancy Costs payable by the Department or a third party to the Contractor. In the event of any dispute arising over whether the Contractor can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the dispute shall be determined in accordance with the procedure set out in clause 39 (Dispute Resolution).

4 FULL AND FINAL SETTLEMENT

- 4.1 Any Breakage Costs paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Contractor in relation to any termination by the Department pursuant to clause 10.2 (Termination) and the Contractor shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

5 INVOICING FOR THE PAYMENTS ON TERMINATION

- 5.1 All sums due under this Schedule shall be payable by the Department to the Contractor in accordance with the payment terms set out in Schedule 2 (Financials).

6 SET OFF

- 6.1 The Department shall be entitled to set off any outstanding liabilities of the Contractor against any amounts that are payable by it pursuant to this Schedule.

7 NO DOUBLE RECOVERY

- 7.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Assets that are to transfer to the Department then, to the extent that the Department makes any payments pursuant to the Exit Plan that the Contractor shall draft in accordance with clause 15.14 of the Contract in respect of such Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 7.2 The value of the Breakage Costs Payment shall be reduced or extinguished to the extent that the Contractor has already received the Charges or the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.
- 7.3 Any payments that are due in respect of Assets that are to transfer to the Department shall be calculated in accordance with provisions agreed between the Parties and detailed in the Exit Plan.

8 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

- 8.1 The Department may issue a Request for Estimate at any time during the Contract Period provided that no more than 2 Requests for Estimate may be issued in any 6 month period.
- 8.2 The Contractor shall within 20 Business Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Breakage Costs that would be payable by the Department based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "Termination Estimate"). The Termination Estimate shall:
- (a) be based on the relevant amounts set out in the Financial Model;
 - (b) include:
 - (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-Contract and appropriate supporting documentation; and
 - (iii) such information as the Department may reasonably require; and
 - (c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Business Days.
- 8.3 The Contractor acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Department to terminate this Contract.

ANNEX 1: MAXIMUM BREAKAGE COSTS PAYMENT

The table below sets out, by Contract Year, the maximum amount of Breakage Costs that the Department shall be liable to pay to the Contractor pursuant to this Contract:

Termination Date	Maximum Breakage Costs Payment
Anytime in the first Contract Year	

SCHEDULE 13 – STAFF TRANSFER

Not used

SCHEDULE 14 - CONTRACTOR'S DIGITAL PLATFORM

1. Definitions

1.1. In this Schedule, the following words shall have the following meanings and:

"Department Property"	the property, other than real property and IPR, including the Department System, any equipment issued or made available to the Contractor by the Department in connection with this Contract;
"Department Software"	any software which is owned by or licensed to the Department and which is or will be used by the Contractor for the purposes of providing the Services;
"Department System"	the Department's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Department or the Contractor in connection with this Contract which is owned by or licensed to the Department by a third party and which interfaces with the Contractor System or which is necessary for the Department to receive the Services;
"Commercial off the shelf Software" or "COTS Software"	Non-customised software where the IPR may be owned and licensed either by the Contractor or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms
"Contractor System"	means the information and communications technology systems and software used by the Contractor in supplying the Services, including the Provider's hosted website or webpages (relevant to the services), mobile app, COTS software, the Provider's equipment, configuration and management utilities, calibration and testing tools and related cabling.
"Defect"	<p>any of the following:</p> <ul style="list-style-type: none">a) any error, damage or defect to the Contractor's System that affects the delivery of the Services; orb) any error or failure of code within the software which causes any part of the Contractor's or Department System to malfunction or to produce unintelligible or incorrect results; orc) any failure to provide the performance, features and functionality specified by the Contractor (including any adverse effect on response times) regardless of whether or not it prevents the relevant part of the Contractor's System from passing any test required under this Contract; ord) any failure of any part of the Contractor's System to operate in conjunction with or interface with any other part of the Contractor's or Department System in order to provide the performance, features and functionality required to deliver the Services;
"Emergency Maintenance"	ad hoc and unplanned maintenance provided by the Contractor where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;
"ICT Environment"	the Department System and the Contractor System;

"Licensed Software"	all and any Software licensed by or through the Contractor, its Sub-Contractors or any third party to the Department for the purposes of or pursuant to this Contract, including any COTS Software;
"Maintenance Schedule"	has the meaning given to it in paragraph 5 of this Schedule;
"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;
"New Release"	an item produced primarily to extend, alter or improve the Contractor System or any part of it by providing additional functionality or performance enhancement (whether or not defects in the Software are also corrected) while still retaining the original designated purpose of that part of the Contractor's System;
"Open Source Software"	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
"Operating Environment"	means the Department System and any premises (including the Department Premises, the Contractor's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> a) the Services are (or are to be) provided; or b) the Contractor manages, organises or otherwise directs the provision or the use of the Services; or c) where any part of the Contractor System is situated;
"Permitted Maintenance"	has the meaning given to it in paragraph 55.2 of this Schedule;
"Software"	Specially Written Software COTS Software and non-COTS Contractor and third party Software;
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Contractor (or by a Sub-Contractor or other third party on behalf of the Contractor) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software.

For the avoidance of doubt Specially Written Software does not constitute New IPR;

2. Licensed software warranty

2.1. The Contractor represents and warrants that:

- 2.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software used by the Contractor (and/or any Sub-Contractor) which are necessary for the performance of the Contractor's obligations under this Contract;
- 2.1.2. all components of the Specially Written Software shall:
 - 2.1.2.1. be free from Defects, material design and programming errors;
 - 2.1.2.2. perform in all material respects in accordance with the Annex A of this Schedule; and
 - 2.1.2.3. not infringe any IPR.

3. Provision of the Digital Platform

3.1. The Contractor shall:

- 3.1.1. ensure that the release of any new COTS Software in which the Contractor owns the IPR, or upgrade to any Software in which the Contractor owns the IPR complies with the interface requirements of the Department and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Department three (3) Months before the release of any new COTS Software or Upgrade;
- 3.1.2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Contractor are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- 3.1.3. ensure that the Contractor System will be free of all encumbrances;
- 3.1.4. ensure that the Contractor System is fully compatible with any Contractor Software, Contractor System, or otherwise used by the Contractor in connection with this Contract;
- 3.1.5. minimise any disruption to the Services and the ICT Environment and/or the Department's operations when providing the Services;
- 3.1.6. Correct any Defects as soon as practicable;
- 3.1.7. Non-functional requirements:
- 3.1.8. ensure that the Digital Platform is fully scalable to meet current and future needs, without having any negative impact upon the performance (and user experience) of the solution;
- 3.1.9. have an understanding of non-functional requirements and build them into the Digital Platform i.e. volumetrics, usability, security, accessibility, interoperability, reliability, maintainability, availability, scalability, portability and compatibility;
- 3.1.10. makes use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level", then this shall be deemed acceptable.

Accessibility:

- 3.1.11. ensure its Digital Platform meets industry standards for accessibility and is compliant with WCAG V2.1 to 'AA' Standard <https://www.w3.org/TR/WCAG21/> and ISO 9241-171:2008 (Ergonomics of human-system Interface);
- 3.1.12. ensure that the Digital Platform is compatible with the following 'Assistive Technologies': JAWS, Zoomtext, Dragon NaturallySpeaking, and Dolphin Supernova or equivalent.

Hosting

- 3.1.13. ensure the Digital Platform is hosted within the UK mainland, ensuring all development, management, support, processing and storage of Departmental Data remains within the UK and in compliance with domestic standards. Hosting outside of the UK is also acceptable, provided the information is not stored within a Hostile State and that the supplier can demonstrate its adherence to the Information Commissioner's Office's (ICO).

4. Audit

- 4.1. The Contractor shall allow any auditor access to the Contractor premises to:
 - 4.1.1. inspect the ICT Environment and the wider service delivery environment (or any part of them);
 - 4.1.2. review any records created during the design and development of the Contractor System and pre-operational environment such as information relating to testing;
 - 4.1.3. review the Contractor's quality management systems relating to the Contractor's System including all relevant quality plans.

5. Maintenance of the ICT Environment

- 5.1. The Contractor shall create and maintain a rolling Schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the Department.
- 5.2. The Contractor shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 5.3. The Contractor shall give as much notice as is reasonably practicable to the Department prior to carrying out any Emergency Maintenance.
- 5.4. The Contractor shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Services.

6. Malicious Software

- 6.1.1. The Contractor shall, throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 6.1.2. 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 of Government Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.
- 6.1.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 6.1.2 shall be borne by the Parties as follows:
 - 6.1.3.1. by the Contractor, where the Malicious Software originates from the Contractor Software, the third party Software supplied by the Contractor or the Government Data (whilst the Government Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Department when provided to the Contractor; and
 - 6.1.3.2. by the Department, if the Malicious Software originates from the Department Software or the Department Data (whilst the Department Data was under the control of the Department).

7. Service Management Software & Standards

- 7.1. The Contractor complies with relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:

- a) ITIL v3 2011;
- b) ISO/IEC 20000-1 2011 "ITSM Specification for Service Management";
- c) ISO/IEC 20000-2 2012 "ITSM Code of Practice for Service Management";
- d) ISO 10007 "Quality management systems – Guidelines for configuration management";
and
- e) BS25999-1:2006 "Code of Practice for Business Continuity Management" and, ISO/IEC 27031:2011, ISO 22301 and ISO/IEC 24762:2008 in the provision of "IT Service Continuity Strategy" or "Disaster Recovery" plans.

ANNEX TO SCHEDULE 14 - SERVICE LEVELS

1. DEFINITIONS

1.1. In this part, the following words shall have the following meanings:

- "Critical Service Level Failure"** means a failure by the Contractor to meet any Service Level for a continuous period of 7 calendar days or a combined period of more than 14 days in a 28-day period.
- "Service Levels"** means the service levels set out in Table A of this Annex to Schedule 14.
- "Service Level Failure"** means a failure by the Contractor to meet the Service Level Performance Measure in respect of a Service Level.
- "Service Level Performance Measure"** shall be as set out against the relevant Service Level in Table A of this Annex to Schedule 14.

2. Service Levels

2.1. If the level of performance of the Contractor's System:

2.1.1. is likely to or fails to meet any Service Level Performance Measure; or

2.1.2. is likely to cause or causes a Critical Service Level Failure to occur,

the Contractor shall immediately notify the Department in writing and the Department, in its absolute discretion and without limiting any other of its rights, may:

2.1.3. require the Contractor to immediately take all remedial action that is reasonable to mitigate the impact on the Department and to rectify or prevent a Service Level Failure from taking place or recurring; or

2.1.4. apply the measures outlined in paragraphs 2.11 to 2.15 of Part 2 of Schedule 2.

3. Planned maintenance

3.1. The current planned maintenance times are as specified in the Contractor's latest Maintenance Schedule

4. Failure to meet the Service Levels

4.1. The Contractor shall at all times meet the Service Level Performance Measure for each Service Level.

4.2. The Contractor acknowledges that any Service Level Failure shall entitle the Department to the rights set out in Paragraph 1 of this Annex to Schedule 14.

4.3. The Contractor shall send MI Reports to the Department detailing the level of compliance which was achieved against each Service Level Performance Criteria in accordance with the provisions of Schedule 2.

Table A - Service Levels			
Service Level Performance Criteria	Service Level Reference	Description	Required Compliance (%) (Service Level Performance Measure)
Contractor's System	CS1	The Contractor's System shall be resilient and made available 24 hours per day, fifty-two (52) weeks a year, except for agreed downtime and maintenance. Plans should be made if the system is to be offline.	100%

Maintenance and Upgrades	MU1	All essential Scheduled maintenance and/or system upgrades to the Contractor's System shall occur outside the hours of 07:30 to 20:00 GMT (or BST as appropriate) Monday to Friday.	100%
	MU2	The Contractor shall provide prior notification of maintenance and/or system upgrades to the Department .	100%
	MU3	Where applicable (e.g. on a website or app), a message shall be placed on the Contractor's System at least 2 weeks in advance of any maintenance or upgrade taking place, followed by subsequent reminders 48 and 24 hours prior to the maintenance or upgrade.	100%
	MU4	When required the Contractor and Department shall ensure any system maintenance/upgrades are tested prior to the upgraded version release going live.	100%
Correction of Defects	D1	Defects to be corrected within 24hrs of identification.	99%