

**THE SECRETARY OF STATE FOR EDUCATION**

**- AND -**

**[THE CONTRACTOR]**

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**CALL-OFF CONTRACT**  
**for the supply of the**  
**Full Induction Programme, to support**  
**National Roll-Out of the Early Career Framework**

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**THIS CONTRACT** is made on **DD MMMM YYYY**

## **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"); and
  2. **[THE CONTRACTOR]** (Company No.[insert]) whose registered office is at **[Address]** (the "Contractor");
- together, the "Parties"

## **WHEREAS:**

- a) By way of an OJEU notice dated 15 September 2020, the Department undertook a procurement for service providers to be appointed to a Framework Agreement for the supply of the Full Induction Programme, to support National Roll-Out of the Early Career Framework.
- b) The Contractor was one of the bidders 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:-**

"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Assessed Cost"	means the estimated cost of remedying a failure where the Department requires the Contractor to take action in accordance with Clause 9.2.2;
"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: <ol style="list-style-type: none"><li>(i) Government Department;</li><li>(ii) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>(iii) Non-Ministerial Department; or</li><li>(iv) Executive Agency;</li></ol>
"Charge"	means the charge made by the Contractor to the DfE in accordance with the Schedule 2 (Pricing and Performance Measures);
"Contract Date"	means the date this Contract is duly executed as stated above;
"Contractor Personnel"	all employees, agents, Contractors, and contractors of the Contractor and/or of any Sub-Contractor;

"the Contractor's Contract Manager"	means [insert name and email address];
"Confidential Information"	means confidential information as defined in the Framework Agreement and in this Contract 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;
"Contract Year"	<p>(a) a period of 12 months commencing on the Contract Date; or</p> <p>(b) thereafter a period of 12 months commencing on each anniversary of the Contract Date;</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Contract Period;</p>
"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 " <b>Controls</b> " and " <b>Controlled</b> " 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;
"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;
"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;
"the Department"	means the Department of Education and its agencies;
"the Department's Contract Manager"	means [insert name and email address];
"Department Data"	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <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;
"Department Premises"	premises owned, controlled or occupied by the Department and/or any Central Government Body which are made available for use by the Contractor or its Sub-contractors for provision of the Services (or any of them);
"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;
"Disclosure and Barring Services 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;

"Early Roll Out Project"	means the early roll out of the early careers framework services through procurement of a framework of early roll out suppliers and the resulting call-off contracts, undertaken by the Department in 2019.
"Employee Transfer Date"	means in respect of any Future Transferring 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;
"Estimated Year 1 Charges"	the estimated Charges payable by the Department during the first Contract Year, as set out in the Payment Schedule;
"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. For the avoidance of doubt the Department's Existing IPR includes Products 1 to 4 that were created under the Early Roll Out Project;
"Exit Plan"	the plan prepared by the Contractor in accordance with clause 15.17 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 [DDMMMMYYYY]
"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 15 of Schedule 1 (Part A: The Services);
"Final Pay Details"	means the information referred to in Part D of Schedule 8;
"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"	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take reasonable preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other 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>

	(b) the failure by any Sub-Contractor of the Contractor to perform its obligations under any sub-contract.
"Framework Agreement"	means the Framework Agreement dated 26 February 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;
"Future Transfer Date"	means the date of termination or expiry of this Contract;
"Future Transferring 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;
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;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679)
"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
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Initial Staff Information"	means the information recorded on the template form set out in Part A of Schedule 8 (TUPE);
"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;
"IPR Claim"	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;
"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;

"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 Part B of Schedule 8 (TUPE);
"Products 1 -4"	means Product 1 (the Sequence), Product 2 (Self-Directed Study Materials), Product 3 (Mentor Session Materials) and Product 4 (ECT Training Session Outlines) which comprise services provided by the appointed suppliers under the Early Roll Out Project;
"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;
"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 " <b>Regulatory Body</b> " 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 Future Transferring Employees as prescribed in Part C of Schedule 8 (TUPE);
"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 Authority).
"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.

"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;
"Serious Breach"	means 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: <ul style="list-style-type: none"> <li>(i) a breach of security that adversely affects the Personal Data or privacy of an individual; and</li> <li>(ii) failure to comply with Law, or acts or omissions by the Contractor that endanger the health or safety of others;</li> </ul>
"the Services"	means the services to be performed by the Contractor as described in Schedule 1;
"Service Commencement Date"	means the date the Contractor commences delivering the Services as stated at paragraph 2.1;
"Service Credit Cap"	4% of the Total Contract Value over the term of the 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;
"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;
"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;
"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 include 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 occasions up to a maximum cumulative Extension Period of [XX] months.
- 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 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.
- 3.4 In entering into this Contract the Contractor is confirming that:
- 3.4.1 it has read and understood the Department's expectations of all services Contractors 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 be deliver the Services in accordance with the Contractor Code; and
- 3.4.2 it will deliver the Services by reference to the Contractor Code as dated February 2019 and thereafter as updated from time to time.
- 3.5 The Contractor shall update the Implementation Plan, as set out at Schedule 7 (Implementation Plan) and submit to the Department, for its approval, a finalised Implementation Plan within 6 (six) weeks of the date of this Contract.
- 3.6 The Contractor shall work co-operatively and in partnership with the Department's independent evaluator as set out in the Schedule 1: Part A (the Services) and shall commit to supporting continuous improvement for the duration of this Contract by sharing knowledge and experiences with the Department, the External Evaluator and the other Contractors on the Framework Agreement.

*Drafting note: clause 3.7 should be removed where a Parent Company Guarantee is not required.*

- 3.7 On or before the date of this Contract the Contractor shall procure the execution of a Guarantee by the Guarantor in favour of the Department substantially in the form annexed at Schedule 9 (Parent Company Guarantee) to the Framework Agreement.

## **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 CHANGES TO THE DEPARTMENT'S REQUIREMENTS**

- 5.1 The Department shall notify the Contractor of any material change to the Department's requirement under this Contract.
- 5.2 The provisions of the Change Control Procedure shall apply to changes initiated by the Department under clause 5.1.

## **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.
- 7.2A The Contractor shall comply with Clause 7.2 and shall provide, at the Department's request, sufficient evidence to demonstrate compliance.
- 7.3 The Department shall be entitled to withhold payment due under Clause 7.2 for so long as the Contractor, in the Department's reasonable opinion, has failed to comply with its obligations to pay any Sub-Contractors promptly in accordance with Clause 7.2. For the avoidance of doubt the Department shall not be liable to pay any interest or penalty in withholding such payment.
- 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, 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.
- 7.10 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.
- 7.11 The Parties agree that:
- 7.11.1 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
- 7.11.2 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**

- 7.12 The Parties agree that:
- 7.12.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 8 (Staff Transfer) shall apply as follows:
- (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 8 (Staff Transfer) shall apply;
  - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 8 (Staff Transfer) shall apply;
  - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 8 (Staff Transfer) shall apply; and (iv) Part C of Schedule 8 (Staff Transfer) shall not apply;
- 7.12.2 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 8 (Staff Transfer) shall apply, Part D of Schedule 8 may apply and Parts A and B of Schedule 9.1 (Staff Transfer) shall not apply; and
- 7.12.3 Part E of Schedule 8 (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 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 Sub-Contractors 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 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, the Early Career Framework.
- 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 Early Careers 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.

## **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 8 (Staff Transfer) and the Annexes to Schedule 8 (Staff Transfer) shall be unlimited.
- 9.5 The Department's liability in respect of the indemnities in Clause 7.11 (Employment Indemnity), Schedule 8 (Staff Transfer) and the Annexes to Schedule 8 (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;
    - 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; 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,

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 willful default, willful 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%.

- 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 13 (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 any other liability or payment as obliged under this Contract.
- 9.14 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.
- 9.15 The Required Insurances referred to in Clause 9.13 shall amount to:
- 9.15.1 at least five million pounds (£5 million) in respect of public liability cover in respect of each and every occurrence;
  - 9.15.2 at least five million pounds (£5 million) in respect of employer's liability cover in respect of each and every occurrence; and
  - 9.15.3 at least two million pounds (£2 million) in respect of professional indemnity cover in respect of each and every claim;
- 9.16 The Department may review the minimum indemnity limits specified for the Required Insurances in Clause 9.14 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.
- 9.17 The Contractor shall provide to the Department by 1 September 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 As at the date of the Framework Agreement the Contractor warranted to the Department its long term credit ratings as set out in Schedule 4 (Financial Distress) Annex 3. The Contractor shall comply with the requirements set out in paragraph 2 of Schedule 4 (Financial Distress) in relation to its credit ratings and 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.
- 10.7 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.

## **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 procure 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 procure 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;
- 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.
- 13.6 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:

- (a) not normally accounted for in delivering the Services; or
- (b) not accounted for in the Charges; or
- (c) after the expiry of the contract;

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 the Schedule.

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 During the period of 6 months preceding the Expiry Date or within 21 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 Initial Staff Information provided that prior to so doing any such tenderer shall have executed in writing a confidentiality undertaking in favour of the Contractor.

15.7 During the period of three months preceding the Expiry Date or within 21 days after the Department or the Contractor has given notice to terminate the Contract, the Contractor shall, subject to the provisions of the Data Protection Laws, provide and thereafter keep updated at monthly intervals, to the Department and to the Successor Contractor information equivalent to the Relevant Personnel Documentation and Prescribed Particulars in respect of each employee whom the Contractor reasonably believes will be a Future Transferring Employee provided that prior to so doing the Successor Contractor nominated by the Department shall have executed in writing a confidentiality undertaking in favour of the Contractor.

15.8 The Contractor shall make reasonable endeavours to assist the Successor Contractor to communicate with, meet and inform and consult with the employees whom the Contractor reasonably believes will be a Future Transferring Employee and their trade union or other employee representatives for the purposes of complying with the Transfer of Undertakings (Protection of Employment) Regulations 2006.

15.9 The Contractor shall immediately prior to the Future Transfer Date provide to the Department or the Successor Contractor a complete and accurate list of the Prescribed Particulars of all employees whom it reasonably believes will be Future Transferring Employees.

15.10 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 Final Pay Details of the Future Transferring Employees in accordance with Schedule 8 (TUPE).

15.11 The Contractor warrants that it shall supply complete and accurate information pursuant to Clauses 15.6, 15.7, 15.9 and 15.10 in all material respects and the Contractor shall indemnify and keep the Department indemnified fully now and in the future in respect of all or any costs whether arising in contract or under any Relevant Legislation suffered or incurred by the Department or the Successor Contractor nominated by the Department by reason of any proceeding, claim or demand arising from or in connection with the provision of information and/or the failure to provide complete and accurate information under Clauses 15.6, 15.7, 15.9 and 15.10 and/or the provision of assistance and/or failure to provide assistance under Clause 15.8 of this Contract.

- 15.12 After receiving notice of the termination of this Contract and for six (6) months preceding the Expiry Date the Contractor shall promptly notify the Department or the Successor Contractor:
- 15.12.1 Of the period of notice given by the Contractor or received from any employee whom the Contractor reasonably believes will be a Future Transferring Employee regardless of when such notice is to take effect;
  - 15.12.2 Of the termination, for whatever reason, of the employment of any employee whom the Contractor reasonably believes will be a Future Transferring Employee; and
  - 15.12.3 Of any other change to any employee whom the Contractor reasonably believes will be a Future Transferring Employee and their terms and conditions of employment, their Prescribed Particulars and their Relevant Personnel Documentation.
- 15.13 The Contractor warrants that it shall supply the Required Information completely and accurately in all respects at the time of supply and shall indemnify and keep the Department and/or any Successor Contractor indemnified in respect of all and any costs suffered or incurred by the Department or the Successor Contractor by reason of any proceedings, claim or demand arising out of or in connection with:
- 15.13.1 Any claim against the Department or the Successor Contractor by any Future Transferring Employee so far as it relates to any act or omission of the Contractor after the Employee Transfer Date and prior to the Future Transfer Date; and
  - 15.13.2 Any claim against the Department or the Successor Contractor by any Future Transferring Employee whose name is not included on the list provided by the Contractor pursuant to Clause 15.9 so far as it relates to the dismissal of such Future Transferring Employee within two Months of the Department or Successor Contractor becoming aware of the transfer of such Future Transferring Employee.
- 15.14 In the event that the Department or the Successor Contractor incurs costs, liabilities or expenditure in respect of Future Transferring 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.
- 15.15 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.
- 15.16 This Clause 15 shall continue in effect for six months following the expiry or termination of this Contract.
- 15.17 Further to the requirements of this Clause 15 and in accordance with Schedule 1 Part A (The Services) the Contractor shall, within six months of the date of this contract prepare and submit to the Department and shall thereafter maintain, an Exit Plan.

## **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 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 Her Majesty's Revenue and Customs 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 Her Majesty's Revenue and Customs 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 HM Revenue and Customs 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 HM Revenue and Customs 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 HM Revenue and Customs 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 HM Revenue and Customs 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 HM Revenue and Customs 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:
    - (a) the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 6);
    - (b) 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.
- 17.5 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 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 3 (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 If the Department believes there are:
- 19.8.1 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
<ul style="list-style-type: none"> <li>• Parts 1 &amp; 2 of the Standard Selection Questionnaire.</li> <li>• No unmanageable conflicts of interest or reputational risk to the ECF.</li> <li>• No unresolved performance issues, as identified by the Quality Assurance function.</li> </ul>	<ul style="list-style-type: none"> <li>• Must be graded Good or Outstanding for overall effectiveness by Ofsted.</li> <li>• No unmanageable conflicts of interest or reputational risk to the ECF and/or the DfE.</li> <li>• No unresolved performance issues, as identified by the Quality Assurance function and/or by the DfE.</li> </ul>

- 19.8.2 Compulsory grounds for excluding a Sub-Contractor pursuant to Regulation 57 of the Regulations; or
- 19.8.3 Non-compulsory grounds for excluding a Sub-Contractor pursuant to Regulation 57 of the Regulations;

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

- 19.9 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 PAYMENTS AND INVOICING**

- 27.1 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.
- 27.2 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 27.1127.9 being issued by the Contractor.
- 27.3 Invoices in relation to Output Payments will be paid once the Department has verified that Outputs have been completed, subject to accurate MI returns and satisfactory evidence being submitted where required, as set out in Annex 1 to Schedule 2: Part 1 – Payment Process. If Output Payments are made based on inaccurate MI returns or evidence being submitted, and it later emerges that

Output Payments were incorrectly made for Participants who did not start or remain engaged on the programme, the Department will be eligible to clawback those payments made.

- 27.4 The Contractor shall submit the first invoice by 25<sup>th</sup> April 2021 and subsequent invoices shall be submitted by the 25<sup>th</sup> of the month following the month in respect to which the invoice relates, unless otherwise stated in the contract.
- 27.5 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.
- 27.6 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.
- 27.7 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.
- 27.8 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.
- 27.9 Invoices shall be submitted electronically by email to [ecf.delivery@education.gov.uk](mailto:ecf.delivery@education.gov.uk) and the Department's Contract Manager by the relevant date as specified in Clause 27.4.
- 27.10 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 27.9.
- 27.11 An invoice is a Correctly Submitted Invoice if it is legible and includes:
- 27.11.1 the date of the invoice
  - 27.11.2 Contractor's full name and address;
  - 27.11.3 Contract reference number;
  - 27.11.4 Purchase Order number
  - 27.11.5 the charging period;
  - 27.11.6 a detailed breakdown of the appropriate Charges including deliverables, milestones achieved and Service Credits (if applicable);
  - 27.11.7 days and times worked (if applicable);
  - 27.11.8 Service Credits (if applicable); and
  - 27.11.9 VAT if applicable.
- 27.12 The Department shall not pay an invoice which is not a Correctly Submitted Invoice.
- 27.13 The Department intends to pay Correctly Submitted Invoices 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 27.12 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.
- 27.14 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.

- 27.15 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.
- 27.16 The Department shall not be obliged to pay the final invoice until the Contractor has carried out all of the Services.
- 27.17 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.
- 27.18 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.
- 27.19 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 [The Contractor]**

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**

[insert framework service specification and cohort brief]

## **SCHEDULE 1: PART 2 – THE CONTRACTOR’S SOLUTION**

[Insert framework tender submission and cohort service proposal]

## SCHEDULE 2: PART 1 – PRICING

### DEFINITIONS

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

<b>“Operating Surplus”</b>	means any sum identified as the Operating Surplus in the Pricing Schedule;
<b>“Output”</b>	means the successful completion of specific deliverables per Participant as set out in Table 2 at paragraph 1.4.4.
<b>“Output Payment”</b>	means the price the Department will pay the Contractor per Output achieved in accordance with Paragraph 1.5.2.
<b>“Paragraph”</b>	means a paragraph of this Schedule 2: Part 1 unless expressly indicated to the contrary.
<b>“Participant”</b>	Means an early careers teacher (ECT) or their Mentor.
<b>“Per Participant Price”</b>	means the price set per Participant in the Pricing Template.
<b>“Pricing Schedule”</b>	means the pricing breakdown submitted by the Contractor with its framework Tender (included at Annex 1 of Schedule 7 of the Framework Agreement) and revised in response to the requirements for the Call-off Contract.
<b>“Profit Margin”</b>	means any sum identified as the Profit Margin in the Pricing Schedule.
<b>“Service Fee”</b>	means a monthly fee paid with effect from the Service Commencement Date calculated in accordance with Paragraph 1.3.3.
<b>“Total Contract Value”</b>	means the total value of the Services to be delivered under this Call-Off Contract. The Total Contract Value is stated in the table at Annex 2 and detailed in the Contractors Pricing Schedule included at Annex 2.

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.
2. The Department shall pay the Contractor the Charges in arrears for costs relating to the Services in line with the costs submitted in the Pricing Schedule and satisfactorily meeting the KPIs, Service Levels and Performance Management, as set out in Part 2 of this Schedule 2 (Performance).
3. 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.
4. Indexation shall not apply to the Charges.
5. Invoices shall be submitted on the 25<sup>th</sup> of each month of the relevant invoice period. For variable 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.
6. 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 Service Users) to enable the Department to validate any claim for payment made by the Contractor.

### Charges on Service Users

7. Neither the Contractor nor its agents or Sub-Contractors shall levy any charge on Service Users in respect of the Services

### **Charges to Schools (School Contribution)**

8. Neither the Contractor nor its agents or Sub-Contractors shall levy any charge on schools in respect of the Services.

### **Recovery of Sums Due**

9. 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 unilaterally deduct the sum from any sum due, or which at any later time may become due under any other agreement or contract with the Department.
10. 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.
11. 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.
12. All payments due shall be made within a reasonable time 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.

### **Disputed Claims**

13. Notwithstanding paragraph 5 of this Schedule 2, payment by the Department of all or any part of any Charges rendered on an invoice 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.
14. 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.
15. 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.
16. If any Charge 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.
17. 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.

### **Continuous Improvement**

18. 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.
19. Without limiting Paragraph 21 of this Schedule 2: Part 1, upon a request from the Department, the Contractor shall produce a plan for improving the provision of Services and/or 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:
  - 19.1 identifying the emergence of new and evolving technologies, which could improve the Services;

- 19.2 identifying changes in behaviour by the Department that could/would result in a cost saving and a reduction in the Charges;
  - 19.3 identifying and implementing efficiencies in the Contractor's internal processes and administration that may lead to cost savings and reductions in the Charges;
  - 19.4 identifying and implementing efficiencies in the way the Department interacts with the Contractor that may lead to cost savings and reductions in the Charges;
  - 19.5 identifying and implementing efficiencies in the Contractor's supply chain that may lead to cost savings and reductions in the Charges;
  - 19.6 identifying and implementing efficiencies generated from other Government contracts or funding arrangements that may lead to cost savings and reductions in the Charges;
  - 19.7 identifying opportunities for savings or efficiencies as a result of the Contractors financial benefit from commercial use of the service Improvement Plan.
  - 19.8 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 Term; and
  - 19.9 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.
- 20. 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.
  - 21. 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.
  - 22. 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:
    - 22.1 the Contractor shall use all reasonable endeavours to provide the Services in accordance with the Continuous Improvement Plan; and
    - 22.2 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.
  - 23. 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).

### **Adjustment of the Charges**

- 24. The Charges may only be varied by means of a Contract Change Notice, and in accordance with the provisions of this Contract.
- 25. Should the Contractor fail to recruit at least 75% of the recruitment target at paragraph 1.2.3 of Annex 1 to Schedule 2: Part 1, by 31<sup>st</sup> October 2021 then both parties agree that Charges shall not be considered to represent an accurate reflection of the costs incurred by the Contractor and using open book costing methodology the Department shall be entitled to validate the actual costs incurred by the Contractor and adjust the Charges accordingly.

### **Financial Reporting and Audit**

- 26. 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.

27. 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 Authority or any persons appointed to act on the Authority's behalf at any reasonable time having made prior appointment with the Contractor. The Authority 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 Authority's written request.
28. If the Authority reasonably considers the Open Book Data does not accurately represent and detail sums relating to this Agreement and the Services then the Supplier shall provide the Authority with documentary evidence relating to such sums and contractual obligations.
29. During the Term, and for a period of 7 years following the end of the Term, the Contractor shall:
  - a. maintain and retain the Open Book Data; and
  - b. disclose and allow the Authority and/or the auditor (whether internal or external) of the Authority access to the Open Book Data.
30. The Contractor shall provide, during the Contract Period, two updates to the cohort Pricing Schedule that compares the forecast to the actuals at Month 12 and at the conclusion of the Cohort at Month 24. The Contractor will also supply a monthly profile of deployed FTE for the Cohort duration, which is updated for actuals every month and submitted to the Department.
31. 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.
32. The Contractor shall instruct its external auditor to provide reasonable co-operation with the Audit Agents for the purposes of verifying financial information.
33. 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

### 1. General

1.1 The Charges payable to the Contractor by the Department shall consist of:

- 1.1.1 The Monthly Service Fee;
- 1.1.2 The Output Payments, consisting of;
  - (a) Participant Start Payments
  - (b) Participant Retention Payments
  - (c) Participant Completion Payments
- 1.1.3 Uplift Payment.

All subject to and in accordance with the provisions of this Contract.

### 1.2 Volume Banded Per Participant Prices

1.2.1 The Contractor shall provide the Services in accordance with the Volume Banded per Participant Pricing List below in Table 1.

#### 1.2.2 Table 1 – Volume Banded Per Participant Pricing

	Lower Limit	Upper Limit	Per Participant Price
Volume Band A	0	2,000	£ [Cannot exceed £1,400 (ex VAT)]
Volume Band B	2,001	4,000	£ [Must be lower than Volume Band A]
Volume Band C	4,001+	N/A	£ [Must be lower than Volume Band B]

1.2.3 The Contractor shall deliver the Services in accordance with their service proposal at Schedule 1: Part 2, based upon a recruitment target of [insert agreed recruitment target] ECTs and their Mentors, and the relative Per Participant Pricing based on the payment bands in Table 1.

### 1.3 Service Fee

- 1.3.1 Subject to the terms of the Contract, the Service Fee will be paid to the Contractor on a monthly basis, with effect from the Service Commencement Date on the basis set out in Paragraphs 1.3.2, 1.3.3, and 1.3.7 until the expiry of the Call-off Contract.
- 1.3.2 The Service Fee is capped at 40% of the Total Contract Value. Any additional Participants enrolled on the programme will only be eligible for payment with prior agreement from the Department and will be paid the full Volume Banded Per Participant Price in line with the Output Payment milestones.
- 1.3.3 The Service Fee will be a fixed amount per month, based on the total Service Fee sum in the Pricing Schedule, divided by the period stated in Paragraph 1.3.1.
- 1.3.4 The Contractor must submit invoices by the 25<sup>th</sup> of every month, with the first invoice to be submitted by the [25<sup>th</sup> April 2021].
- 1.3.5 If by [1<sup>st</sup> December 2021], the staffing headcount profile of the Contractor is less than 75% of what was specified in the Pricing Template at the point of tender, the Department reserves the right to adjust the monthly Service Fee until the staff in post hits the target profile.
- 1.3.6 As per paragraph 25 of Part 1 of Schedule 2, if on [31<sup>st</sup> October 2021] the Contractor has failed to recruit 75% of the recruitment target in paragraph 1.2.3 then the Department reserves the right to validate the actual costs incurred by the Contractor and at its discretion, adjust the monthly Service Fee to reflect the reduced recruitment volumes and related activity.

*Drafting note: paragraph 1.3.7 only applies to the 2021 cohort and will be removed for all subsequent cohort call-offs.*

- 1.3.7 The Contractor shall ensure that where set-up and mobilisation costs have been paid under a separate Call-Off Contract (in accordance with paragraphs 17 to 21 in Schedule 7 of the Framework Agreement) they will be offset against the 2021 cohort charges, via a reduction in the 'Service Fee' equal to the amount of funding paid under the set-up and mobilisation costs Call-Off Contract.

## 1.4 Output Payments

- 1.4.1 Subject to the terms of the Contract, the Department shall pay the Contractor the applicable Output Payment for each Output that is achieved in accordance with the requirements of the Contract. The applicable Output Price shall be ascertained by reference to Table 3 below.
- 1.4.2 In order to trigger payment for Output 1 – Participant Start, each Participant must start on the programme by [31<sup>st</sup> October 2021]. If a Participant that was signed up prior to 31<sup>st</sup> October does not intend on starting the programme, the Contractor may replace them with another Participant by [31<sup>st</sup> October 2021].
- 1.4.3 If a Participant is recruited to start on the programme but withdraws prior to the [31<sup>st</sup> October 2021], the Contractor will not be eligible to claim payment for Output 1 for that Participant, unless another Participant replaces them. The Contractor must inform the Department of any recruited Participants who have withdrawn prior to starting the programme. If a Participant withdraws prior to [31<sup>st</sup> October 2021] and an Output Payment is made for that Participant due to incorrect information being supplied by the Contractor or school, the Department will be eligible to claw back this payment as per paragraph 1.4.11.
- 1.4.4 In order to trigger payment for Outputs Retention Point 1 – Retention Point 4, the Participant must remain enrolled and engaged on the course until the Milestone Date specified in the table below. If a Participant drops off in between two retention points, an output payment will be paid for the period between retention points but no output payments will be made past that point as the Contractor is no longer delivering to that Participant. Contractors will need to have a policy on what happens if a Participant drops off the programme.
- 1.4.5 **Table 2 – Retention Points**

Retention Point	Milestone Date	Payment Made
Output 1 - Participant Start	[31 <sup>st</sup> October 2021]	[30 <sup>th</sup> November 2021]
Output 2 – Retention Point 1	[31 <sup>st</sup> January 2022]	[28 <sup>th</sup> February 2022]
Output 3 – Retention Point 2	[30 <sup>th</sup> April 2022]	[31 <sup>st</sup> May 2022]
Output 4 – Retention Point 3	[30 <sup>th</sup> September 2022]	[31 <sup>st</sup> October 2022]
Output 5 – Retention Point 4	[31 <sup>st</sup> January 2023]	[28 <sup>th</sup> February 2023]
Output 6 – Participant Completion	[30 <sup>th</sup> April 2023]	[31 <sup>st</sup> May 2023]

- 1.4.6 In order to trigger payment for Output 6 – Participant Completion, each Participant must remain enrolled and engaged on the programme, as per paragraph 1.4.9, by [30<sup>th</sup> April 2023] and be on track to complete the programme.
- 1.4.7 If a Participant is not on track to complete the programme by [30<sup>th</sup> April 2023] due to going on maternity leave, sabbatical leave, working part-time or due to illness, but the Participant will continue the programme, the Contractor can invoice over a tailored timeframe which would need to be agreed with Department, subject to variation of the Contract to extend the Contract Period in accordance with Clause 2.2 of this Call-off Contract. Output Payments made cannot exceed the total amount of Output Payments eligible per Participant in the Pricing Schedule. Contractors must have a policy on Participants undertaking a reduced term of induction of at least 1 academic year and for the above scenarios.
- 1.4.8 The Department will pay the Contractor Output Payments based on accurate MI returns, including the details below:

- 1.4.8.1 The School's URN, contact details of the Induction Co-ordinator (including name, telephone number and email address), date school signed up, date school withdrew/reason for withdrawal when appropriate and reason for school not signing up with the Contractor.
- 1.4.8.2 The Participant's TRN, role, name, Date of Birth, working pattern, email address, date Participant signed up, confirmation of Participants continued involvement and reason for withdrawal/deferral where applicable.
- 1.4.9 The Contractor must submit to the Department evidence that each Participant remains engaged on the programme before Output Payments 2 to 6 are made. Examples of acceptable evidence of a participant remaining engaged with the programme include, but are not limited to, confirmation of a participant attending a training event or confirmation of a Participant completing a minimum of 50% of the self-directed study.
- 1.4.10 In the event that the Contractor is unable to evidence a Participants ongoing engagement as per clause 1.4.9, they may provide alternative evidence, such as confirmation from the School that the Participant remains engaged in the programme. Where the Department is not satisfied with the evidence submitted, it reserves the right to request further information in order to validate a claim made by the Contractor and withhold the Output Payment until satisfactory evidence of continued engagement is submitted. The Department may also conduct spot checks to verify the data is accurate by cross-referencing with other MI returns or contacting Schools to validate participation engagement data.
- 1.4.11 If an MI return or evidence submitted by the Contractor of continued engagement is not accurate, and when the Department validates and verifies the data provided it emerges that payments have been made for Participants who did not start or remain on the course, the Department will clawback payments made.

## 1.5 Charges for Volume Banded Output Payments

- 1.5.1 Payment will be made based upon the successful delivery of each individual output as set out in Table 3.

### 1.5.2 Table 3 - Output Payments

The following volume based Output Payments shall apply during the Contract:

Output Number	Output Payment by Outcome (£) 0 - 2,000 Participants	Output Payment by Outcome (£) 2,001 - 4000 Participants	Output Payment by Outcome (£) 4000+ Participants
Output 1 Participant Start	£ [to be inserted at call-off award]	£ [to be inserted at call-off award]	£ [to be inserted at call-off award]
Output 2 Retention Point 1	£ [to be inserted at call-off award]	£ [to be inserted at call-off award]	£ [to be inserted at call-off award]
Output 3 Retention Point 2	£ [to be inserted at call-off award]	£ [to be inserted at call-off award]	£ [to be inserted at call-off award]
Output 4 Retention Point 3	£ [to be inserted at call-off award]	£ [to be inserted at call-off award]	£ [to be inserted at call-off award]
Output 5 Retention Point 4	£ [to be inserted at call-off award]	£ [to be inserted at call-off award]	£ [to be inserted at call-off award]
Output 6 Participant Completion	£ [to be inserted at call-off award]	£ [to be inserted at call-off award]	£ [to be inserted at call-off award]

- 1.5.3 The relevant Volume Bands applicable to each Output Payment will be re-calculated at the milestone date and will be based on the number of active participants in the cohort at that point.

## **1.6 Uplift Payment**

- 1.6.1 The Department will make an Uplift Payment to the Contractor for each Participant when they start on the programme at Output 1 – Participant Start, if they fulfil the criteria in Paragraph 1.6.2.
- 1.6.2 To be eligible for the Uplift Payment, the Participant must be in a school that is either in one of the 20% most sparse LADs nationally or has at least 40% of pupils eligible for pupil premium. The Department will issue a list of schools and Local Department Districts that are eligible for Uplift Payments prior to each Annual Cohort Competition.
- 1.6.3 If the Participant is at a school that is both in one of the 20% most sparse LADS nationally and has at least 40% of pupils eligible for pupil premium, the Department will pay the Contractor the same Uplift Payment as a Participant who meets one of the specified criteria.
- 1.6.4 If, in accordance with Paragraphs 1.6.1 and 1.6.2, the Uplift Payment is payable, it shall be calculated on the basis of it being £100 per Participant.
- 1.6.5 The Contractor must invoice for the Uplift Payment when submitting all invoices in relation to Output 1. The Department will validate that the Participant meets the criteria and retains the right to clawback funds in relation to the Uplift Payment if after payment it emerges that the Participant does not meet the criteria.

## **1.7 Replacement Participants**

- 1.7.1 If a participant leaves the programme prior to the [1st November 2021] and the Contractor is able to replace them prior to the [1st November 2021], then that replacement participant should be treated as the existing participant for the purposes of payment.
- 1.7.2 The only exception to paragraph 1.7.1 relates to the allocation of an associated mentor. If an ECT loses a mentor during the course of the programme and it is possible for the mentor to be replaced, then a new mentor can replace the originally allocated mentor. If this replacement mentor is new to the programme they will be regarded as the existing mentor for the purposes of payment, meaning only one fee is payable. If an existing mentor on the programme takes on the mentor role for the ECT that has lost their mentor, then no additional fee will be payable. In this case, the fee payable for the original mentor is that related to the relevant Milestone for the date they left the programme

## **2. PRICING OF VARIATIONS**

- 2.1 The provisions of this Paragraph 2 shall apply to the pricing of any Variation (or proposed Variation) and the calculation of any change to the Charges consequent upon a Variation (or proposed Variation).
- 2.2 The Parties acknowledge that a Variation or proposed Variation may have an impact on the Charges in one or more of the following ways –
  - 2.2.1 One-off cost, in which case Paragraph 2.5 shall apply;
  - 2.2.2 Subject to the Contractor's obligation to mitigate increases in the Charges, a Process Variation may result in an amendment to the Output Prices on which the Charges are based, in which case Paragraph 2.6 shall apply;
  - 2.2.3 The cost of any up-front investment by the Contractor in order to achieve a Variation as set out in Paragraph 2.2.2, in which case Paragraph 2.7 shall apply.
- 2.3 In any of the cases referred to in Paragraphs 2.2.1 to 2.2.3 above, and without prejudice to Paragraph 2, the Contractor shall use the Pricing Schedule at Annex 2 of this schedule to demonstrate and justify any claim for additional or reduced Charges and/or proposed revisions to the Output Payment on which the Charges are based arising as a result of any proposed Variation.
- 2.4 Where a Variation is requested by either Party under the Change Control Procedure then, subject to the terms of the Change Control Procedure, the Contractor shall at its own cost prepare, populate

and submit for the Department's approval a specific version of the Pricing Schedule demonstrating the impact of the proposed Variation which shall:

- 2.4.1 Be based on and reflect the principles of the Pricing Model having regard to any assumptions stated in the Pricing Model which affect the Charges;
  - 2.4.2 Include estimated volumes of each type of resource to be employed and the applicable average annual salary for resource employed specified in the Pricing Model;
  - 2.4.3 Include full disclosure of any assumptions underlying such a quotation. The Department reserves the right to request further clarity around these assumptions and the underlying calculations until it is satisfied as to their validity; and
  - 2.4.4 Include evidence of the cost of any assets required for the Variation.
- 2.5 Where Paragraph 2.2.1 applies:
- 2.5.1 The Contractor shall be paid in full upon completion, or by an agreed schedule of milestone payments (both payment options subject to meeting specified acceptance criteria agreed at the outset).
  - 2.5.2 The Department shall issue a separate purchase order and the Contractor shall raise a separate invoice or credit note in respect of the one-off cost.
- 2.6 Where Paragraph 2.2.2 applies:
- 2.6.1 Any necessary changes to the Output Prices for any or all of the volume bandings shall be effected by means of changes to the relevant Output Prices set out in Table 3.
  - 2.6.2 Any necessary changes to the Output Prices will be in accordance with the original requirements for the completion of the Pricing Schedule as set out in the Invitation to Tender, for example the maximum cap on Service Fee will still apply.
  - 2.6.3 The Output Prices shall not be adjusted more than once a quarter. The date any Output Price adjustment ("Price Adjustment Effective Date") takes effect shall be at the start of the quarter immediately following implementation of the Variation in question. For example, where a Process Variation is implemented during the month of September in a Contract Year; the relevant Output Prices shall be adjusted with effect from 1 October in that Contract Year. If there are several adjustments in one quarter, these will be aggregated to make one adjustment at the start of the next quarter.
  - 2.6.4 The Department shall provide the Contractor with a revised Table 3 of this Schedule by the date any such Variation takes effect (1 January, 1 April, 1 July, 1 October).
  - 2.6.5 A Process Variation shall be implemented timeously, and such implementation shall not await the Price Adjustment Effective Date.
  - 2.6.6 If a Process Variation is implemented and there is a demonstrable financial loss to a Party due to the relevant Output Payment(s) not being adjusted until the Price Adjustment Effective Date (first day of next quarter), then the Party impacted in this way can seek recovery of the amount due in the following manner:
    - (d) If it is the Contractor, by submitting a separate invoice and supporting documentation; or
    - (e) If it is the Department, by issuing a credit note request and supporting documentation.Any request to seek recovery of such an amount must be submitted within 3 Months of the Price Adjustment Effective Date.
- 2.7 Where Paragraph 2.2.3 applies, the Process Variation element shall be dealt with in accordance with Paragraph 2.6 above and any up-front investment required to implement such a Process Variation shall itself be dealt with through an adjustment to the relevant Output Price(s) under Paragraph 2.6 above or treated as a one-off cost in accordance with Paragraph 2.5 above.
- 2.8 Following implementation of a Variation, the Department shall make any necessary consequential changes and/or updates to Table 3 of this Schedule 2: Part 1.

## Annex 2 to Schedule 2: Part 1 – Contract Pricing Information

1.1 The Contractor shall provide the Services in accordance with the Pricing Schedule as set out below.

Recruitment Target	Total Contract Value <sup>(1)</sup>	Service Fee (total)	Service Fee (monthly) <sup>(2)</sup>	Output Payments <sup>(3)</sup>
[insert target]	£ [insert value]	£ [insert value]	£ [insert value]	£ [insert value]

1) This value does not account for any uplift payments which will be made in addition to the Total Contract Value as per paragraph 1.6 of Schedule 2: Part 1. The Total Contract Value may be increased by up to 5% to incorporate uplift payments.

2) For the 2021 cohort the monthly Service Fee payments will be adjusted to offset the set-up and mobilisation funding provided via a separate Call-off Contract as per paragraph 1.3.7 of Schedule 2: Part 1.

3) The Output Payment value is the maximum amount payable and actual payments are subject to successful achievement of the performance milestones in paragraph 1.5 of Schedule 2: Part 1.

1.2 The detailed Pricing Schedule is attached as a separate Schedule to this Call-Off Contract.

## SCHEDULE 2: PART 2 – PERFORMANCE

In this section the words below have the following meaning:

<b>“DfE Reporting Template”</b>	means the Department’s spreadsheet that will be shared with Contractors post award which will need to be submitted by the 25 <sup>th</sup> of each month detailing the schools and Participants recruited onto the programme.
<b>“Improvement Plan”</b>	means a plan for improvement that the Department can request from the Contractor within ten (10) Working Days in the event of failure.
<b>“KPI”</b>	means the Key Performance Indicators as set out in table 2 of this schedule.
<b>“Performance Management”</b>	means how the Department will measure the Contractor’s performance and progress against the Service Specification (Schedule 1: Part 1), the Contractors Solution (Schedule 1: Part 2), the Implementation Plan (Schedule 7), and Pricing (Annex 1 of Schedule 2: Part 1).
<b>“Performance Manager”</b>	means the person the Contractor will appoint to ensure that the Contract is delivered as specified in the Contract and that Service Levels, Minimum Targets and KPIs are achieved.
<b>“Quality Assurance”</b>	means how the Department or its agents will measure the Contractor’s performance in developing and delivering the training programme.
<b>“Reporting Period”</b>	means the reporting period that occurs monthly during the lifetime of the contract.
<b>“Service Credits”</b>	means the service credits as set out in table 3 of this Schedule.
<b>“Service Improvements”</b>	means the recommendations made by the Quality Assurance function as specified in this schedule.
<b>“Service Level”</b>	means the Service Levels as set out in table 1 of this Schedule by which the Contractor’s performance will be measured.

### 1. SERVICE LEVELS AND KPIS.

- 1.1 This section sets out the Service Levels and Key Performance Indicators (KPIs) against which the Parties shall measure the Contractor’s performance.
- 1.2 The objective of the Service Levels and KPIs is to:
  - 1.2.1 ensure that the Services are of a consistently high quality and meet the requirements of the Department;
  - 1.2.2 provide a mechanism whereby the Department can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the Services; and
  - 1.2.3 incentivise the Contractor to meet the performance standards and to remedy any failure to meet the required standards expeditiously.

#### Service Levels

- 1.3 The Contractor shall ensure compliance with the Service Levels listed in Table 1 (Service Levels).
- 1.4 The Contractor and the Department shall monitor the Contractor’s performance against each of the Service Levels listed in Table 1 (Service Levels).
- 1.5 The Contractor shall complete and return the monthly DfE Reporting Template outlining performance against the Service Levels to date and confirm whether they have been achieved.

1.6 If the Contractor fails to meet one (1) or more Service Levels in any Reporting Period, or fails to meet any one Service Level in consecutive reporting periods, the Department will require the Contractor to provide the Department with a plan for addressing and resolving the Service Level failures and issue a suspended Service Credit in line with paragraph 1.6.1.

1.6.1 If the failure is resolved and the Contractor meets the failed Service Levels by the end of the next reporting period then the Service Credit will be avoided. If one or more of the failed Service Levels are failed in the next reporting period then the Service Credit will be upheld.

1.7 If the Contractor fails the Service Levels as detailed in paragraph 1.6 for three (3) consecutive reporting periods, or on four (4) separate occasions, then it will be considered a 'Service Failure' and the Department reserves the right to take action in line with paragraphs 2.11 to 2.13 (Consequence of Service Failure).

# 1.8 Table 1: Service Levels

Subject	Ref	Service Level	Reporting Period
Reporting and Meetings	RM1	Submit to the Department a completed monthly contract management report by the twenty-fifth (25th) of the following month using the template provided by the Department.	Monthly
	RM2	Attend monthly contract management meetings.	Monthly
	RM3	Attend any ad hoc development and operational meetings as required by the Department.	Ad-hoc. A minimum 10 working days notice will be provided to the supplier requesting their attendance to a meeting.
	RM4	Attend bi-annual review meetings. At least 7 days prior to the meeting a summary report should be submitted to the Department for review that outlines progress against all key milestones set out in this schedule.	Bi-annual Times and dates to be agreed by both parties in advance of meetings being set.
	RM5	Engage with Department facilitated opportunities for strategic framework collaboration, including attending scheduled events, identifying opportunities for collaboration, and progressing actions in line with agreed timescales.	Ad-hoc. A minimum 20 working days notice will be provided.
Administration / Communication	C1	Provide a meaningful response to one hundred per cent (100%) of queries raised by the Department or Service Users and correspondence within three (3) Working Days from the date of receipt or within such other timescales for response as provided specifically for within the terms of the contract. In the event the query raised is complex the Contractor can request an extension of time, which must be agreed by the Department.	Ad-hoc. A minimum 3 working days notice will be provided and an extension can be requested if the query raised is of a particularly complex nature.
Management Information	MI1	Submit quality data on teacher and school participation to the Department by the twenty-fifth (25th) of each month using the template provided by the Department. Ensuring the data submitted to the Department on this date is reflective of the	Monthly

		number of schools/Participants recruited onto the programme at this point in time.	
	MI2	Ensure that all data discrepancies identified by the Department are 100% accurately addressed ahead of the next submission of data.	Monthly
Finance	F1	Ensure that Valid Invoices are submitted to the Department by the twenty-fifth (25th) of the month for the relevant reporting period.	Monthly
	F2	Comply and respond to any requests for Open Book or financial validation data within ten (10) working days.	Ad-hoc. A minimum 10 working days notice will be provided.
	F3	Engage with any framework level commercial incentives by attending any scheduled meetings and progressing any resulting actions of follow-up work within the agreed timescales.	Ad-hoc. A minimum 10 working days notice will be provided to the supplier requesting their attendance to a meeting. Timescales for completion of any follow up work will be discussed and agreed in advance by both parties.
	F4	Ensure that all financial discrepancies identified by the Department are 100% accurately reconciled ahead of the next invoice period and any variances to invoicing values offset.	Monthly
Complaints	COMPL1	The Contractor's Contract Manager must report all complaints from Service Users about the Services orally by telephone or in person, as well as in writing, to Department within three (3) Working Days from the date of the complaint.	Ongoing throughout the contracting cycle
	COMPL2	The Contractor's Contract Manager must provide a meaningful response to all complaints from Service Users orally by telephone or in person, as well as in writing, copying in Department, within five (5) Working Days from the date of the complaint.	Ad-hoc. A minimum 5 working days notice will be provided.
Records and questionnaires	RQ1	All satisfaction questionnaires shall be completed in full and returned to the Department within ten (10) working days from the date of completion, and any information requested by the Department shall be provided by the Contractor to the Department within five (5) Working days from the date of the request.	Evidence to be submitted within 5 working days upon request by the Department. Key measures July 2022 and July 2023.
Delivery	D1	Delivery of the Programme against the dates and milestones identified in Schedule 7 (Implementation Plan).	Monthly
	D2	Iteratively developing the training programme responding constructively to	Deadlines for completion will be provided by the Department or its Quality Assurance Agent as

		feedback from the Department and meeting deadlines for returning drafts.	required throughout the contracting cycle.
Service Improvement	SI1	Develop a full Continuous Improvement Plan in line with Schedule 2; Part 1 and report progress to the Department against agreed milestones.	Deadline for development of the plan will be agreed with the supplier as and when an issue materialises. The deadline for submission will depend upon the amount of work required to address the problem.
	SI2	Cooperate with the requirements of the QA function by supplying information, facilitating visits, and otherwise supporting the implementation and ongoing work of the QA function.	Deadlines for completion will be provided by the Department or its Quality Assurance Agent as required throughout the contracting cycle.

## KPIs

- 1.9 The Parties shall monitor the Contractor's performance against each of the KPIs listed in Table 2 (KPIs) at the agreed intervals.
- 1.10 If at the agreed reporting milestone the Contractor:
- 1.10.1 achieves a KPI, performance measures will be achieved, and no further action will be required;
  - 1.10.2 does not achieve a KPI, it will be declared a 'Service Failure' and the Department reserves the right to take action in line with paragraphs 2.11 to 2.13 (Consequence of Service Failure) and issue a Service Credit in accordance with Paragraph 4 of this Schedule.
- 1.11 **Table 2 – Cohort Key Performance Indicators**

KPI	Measure	Monitoring Method	Target and Milestone
<b>1a</b>	<b>Recruitment</b> Recruit a minimum of 1,000 ECTs and their assigned Mentors onto the programme by the end of October 2021.	Monthly monitoring during the recruitment cycle as part of contract management.	1,000 ECT's and their assigned mentors to be recruited the end of [October 2021]
<b>1b</b>	<b>Recruitment</b> Of the 1,000 ECTs and their assigned Mentors recruited onto the programme 220 must come from schools with at least 40% of their pupils eligible for PP.	Monthly monitoring during the recruitment cycle as part of contract management.	Target as specified end of [October 2021]
<b>1c</b>	<b>Recruitment</b> Of the 1,000 ECTs and their assigned Mentors recruited onto the programme 110 must come from Local Department Districts identified as in the top 20% most sparse in terms of schools per hectare.	Monthly monitoring during the recruitment cycle as part of contract management.	Target as specified end of [October 2021]
<b>2</b>	<b>Retention</b> A minimum of 75% of the Participants that start the training are retained in year 1 and 2 of the delivery.	Retention rates will be measured for each cohort from the start of the programme through to the end of each year of the programme i.e. at the end of year 1 and year 2.	Target as specified [July 2022] Target as specified [July 2023]

3	<b>Satisfaction</b> A minimum of 80% of the Participants rate the training good or above at the end of year 1 and 2	Satisfaction will be measured through a survey completed by all Participants at the end of each year of the programme. The DfE will design and issue a survey for all Participants directly to the Contractor. The Contractor shall support the DfE by administering the surveys and returning them back to the DfE for review.	Target as specified [July 2022]  Target as specified [July 2023]
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- 1.12 In line with the cross-government transparency agenda the Department reserves the right to make the Contractors performance against the KPIs in table 2 available in the public domain, which may include publishing them on gov.uk and including them in any related transparency reporting.

## 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) on a monthly basis 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 Service Levels, Minimum Targets and KPIs 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 an Performance Improvement Plan is not being complied with, and the Contractor shall take such remedial action.
- 2.6 If there is a failure to achieve a Service Level, Minimum Target or KPI, the Contractor shall use all reasonable endeavours to immediately minimise the impact of any failure and to prevent such a failure from recurring.
- 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 frequency 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.

### Consequence of Service Failure

- 2.11 Without prejudice to any other rights or remedies arising under this Contract, including under Clause 10 (Termination) for material breach, if the Contractor incurs a Service Failure in any Relevant Period, the Contractor acknowledges and agrees that the Department shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:
- 2.11.1 The Department shall be entitled to require the Contractor, and the Contractor agrees to prepare and provide to the Department, a plan for improvement (an “**Improvement Plan**”) within ten (10) Working Days of a written request by the Department for such Improvement Plan. Such Improvement Plan shall be subject to the Department’s prior approval and the Contractor will be required to implement any approved Improvement Plan, as soon as reasonably practicable;
  - 2.11.2 The Department shall be entitled to require the Contractor, and the Contractor agrees to attend, within a reasonable time one (1) or more meetings at the request of the Department in order to resolve the issues raised by the Department in its notice to the Contractor requesting such meetings;
  - 2.11.3 The Department shall be entitled to serve a notice of improvement (“Improvement Notice”) on the Contractor and the Contractor shall implement such requirements for improvement as set out in the Improvement Notice;
  - 2.11.4 The Department shall be entitled to issue interim performance measures and/or milestones in order to monitor the Contractors implementation of any Improvement Plan or Improvement Notice;
  - 2.11.5 If not already applied to the Service Failure prior to this point, apply a Service Credit.
- 2.12 In the event that the Department has, in its absolute and sole discretion, invoked one or more of the remedies set in paragraph 2.11 above the Department may suspend the Contractor from further call-off opportunities under the Framework Agreement pending the Department being satisfied that the Contractor has;
- 2.12.1 implemented the requirements for improvement set out in the Improvement Notice; and/or
  - 2.12.2 implemented an Improvement Plan approved by the Department; and/or
  - 2.12.3 met the interim performance measures and/or milestones.
- 2.13 Whether or not the Department has exercised its rights pursuant to paragraph 2.12 in the event that the Department has, in its absolute and sole discretions invoked one or more of the remedies set out in paragraph 2.11 above, and allowed the Contractor reasonable opportunity to remedy the Service Failure, and the Contractor either;
- 2.13.1 fails to implement such requirements for improvement as set out in the Improvement Notice; and/or
  - 2.13.2 fails to implement an Improvement Plan approved by the Department; and/or
  - 2.13.3 fails to meet the interim performance measures and/or milestones,
- then (without prejudice to any other rights and remedies of termination provided for in this Contract), the Department shall be entitled to terminate this Contract and with immediate effect by notice in writing in accordance with Clause 10.4.1. Termination of the Contract will be considered a Material Default and the Department may at its absolute discretion terminate the Framework Agreement as per paragraph 7.4 of the Framework Agreement.
- 3. QUALITY ASSURANCE**
- 3.1 The Department’s QA function will monitor the quality of content and delivery across the framework and the Contractor shall support this process and take the necessary actions as recommended by the Department or its appointed QA Agent.
- 3.2 The Department will quality assure the Contractor and its Delivery Partners in the following areas:
- 3.2.1 Content Development – Reviewing and signing off all content and training materials by EEF and the DfE.

- 3.2.2 Ongoing Contractual Requirements – The Contractor will work with the DfE to submit data that supports ongoing monitoring of Contractor performance.
- 3.2.3 Training Delivery – Independent QA function and/or the Department will attend training sessions where relevant, and engage with Delivery Partners and Participants where it deems it relevant.
- 3.3 The Contractor shall cooperate with the ongoing requirements of the QA function in supplying information, facilitating visits to the Contractor and its delivery partners and Participants, and otherwise supporting the work of the QA function to make assessments of quality according to an agreed quality framework (i.e. the Contractor's tender submission and delivery plan initially, followed by a full quality framework that will be developed by the QA Agent).
- 3.4 The Contractor shall engage with the QA function on an annual basis, including facilitating QA function contact with delivery partners. Subject to QA assessment, DfE can determine that full quality assurance reviews may be conducted on less frequent basis, informed by shorter interim annual visits.
- 3.5 The QA function may make recommendations that the Contractor will be required to action in relation to;
  - 3.5.1 Service Improvements – framework wide improvements that arise out of continuous improvements, lessons learnt, user feedback and best practice or any other action that at the QA functions discretion would benefit from being adopted across the framework; and
  - 3.5.2 Quality and Performance – where quality assurance processes have identified a failure to adhere to the quality framework, poor practice, breaches of the framework agreement or any other action that at the QA function's discretion needs to be addressed to ensure the desired quality threshold is maintained.

### **Service Improvements**

- 3.6 Where the QA function makes service improvement recommendations, they shall be under one of the following categories:
  - 3.6.1 Continuous Improvement – service development and improvement activity that is considered to be within the Contractors requirement to apply continuous improvement, respond to feedback and adopt best practice in regard to content and delivery for both ongoing and future cohorts.
  - 3.6.2 Service Development – activity that requires the Contractor to make considerable revisions to their content and/or delivery to a level whereby it is not possible to implement mid-cohort and therefore will only be required for future cohorts. In this instance the Contractor should attempt to implement any such aspects of the recommendation that can be made under paragraph 3.5.1 but will not be required to implement the full recommendation until the next cohort call-off.
  - 3.6.3 Urgent Service Development – activity that requires the Contractor to make immediate and significant revisions to their content and/or delivery in regard to ongoing cohorts that will result in additional cost to the Contractor. In this instance the Contractor may charge the Department for agreed development costs based on the rate card in Schedule 2: Part 1 - Pricing.
- 3.7 If the Contractor fails to implement a Service Improvement recommendation to the required standard as set out by the Department and/or the QA Agent and within the specified timescale then the Department may, at its sole discretion, apply a Service Credit.

### **Quality and Performance**

- 3.8 Where the QA function identifies quality or performance issues they will be identified under one of the following categories:
  - 3.8.1 Recommendation – minor issues or concerns that will need to be resolved by the Contractor within the scope and timescale of the recommendation.
  - 3.8.2 QA Failure – significant issues or concerns that represent a material failure of the quality

framework.

- 3.9 If the Contractor receives 4 [to be confirmed by the Department at the call-off stage] or more Recommendations then the Department reserves the right to issue a suspended Service Credit. If the Recommendations are resolved to the required standard as set out in the Quality Assurance report by the Department and/or the QA Agent within the specified timescale then the Service Credit will be avoided. If, in the opinion of the QA Agent or the Department, the recommendations have not been resolved in full within the timescales then the DfE reserves the right to uphold the Service Credit.
- 3.10 If the Contractor receives a QA Failure, then the Department will issue a suspended Service Credit. If the QA Failure is resolved to the required standard as set out in the Quality Assurance report by the Department and/or the QA Agent within the specified timescale then the Service Credit will be avoided. If, in the opinion of the QA Agent or the Department, the QA Failure has not been resolved in full within the timescales then it will be considered a 'Service Failure', the Service Credit will be upheld and the Department may suspend the Contractor from the Framework until a time that the Department can be assured that adequate actions have been taken to address the failure.

#### **QA Reporting**

- 3.11 The Department reserves the right to use, which may include publishing under government transparency policy, reporting data on Contractors performance against the QA function requirements as a means of demonstrating the 'quality' performance of the framework. The reporting metrics are likely to be, but are not limited to:

3.11.1 Service Improvements – % of recommendations adopted within timescales.

3.11.2 Quality and Performance – number of Recommendations and QA Failures.

#### **4 SERVICE CREDITS**

- 4.1 Accrual of Service Credits shall entitle the Department to a reduction in the Charges.
- 4.2 Financial consequences of Service Credits will be calculated against the Total Contract Value. The Contractor shall off-set the value of any Service Credits against the Charges for the Contract up to a maximum of 4% of the Total Contract Value.
- 4.3 The Contractor confirms that it has taken Service Credits and the potential financial consequences into account in calculating the Charges. Both Parties agree that the Service Credits are a reasonable method of adjusting the Charges to reflect failure to meet minimum performance standards.
- 4.4 The financial consequences that will be applied in the event of a Service Credit are broken down in Table 3 below.
- 4.5 **Table 3: Service Credits**

<b>Service Credits accrued:</b>	<b>Financial consequence equivalent to:</b>
1 Service Credit	1% of Call-off Contract Value
2 Service Credits	2% of Call-off Contract Value
3 Service Credits	3% of Call-off Contract Value
4 or more Service Credits	4% of Call-off Contract Value

## 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: <a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a>
“CCSC” “Certified Cyber Security Consultancy”	is 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: <a href="https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy">https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</a>
“CCP” “Certified Professional”	is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors. See website: <a href="https://www.ncsc.gov.uk/scheme/certified-professional">https://www.ncsc.gov.uk/scheme/certified-professional</a>
“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: <a href="https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa">https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</a>
“Cyber Essentials” “Cyber Essentials Plus”	Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.  There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers: <a href="https://www.iasme.co.uk/apply-for-self-assessment/">https://www.iasme.co.uk/apply-for-self-assessment/</a>

"Data"	shall have the meanings given to those terms by the Data Protection Act 1998
"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"> <li>(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"> <li>(i) supplied to the Contractor by or on behalf of the Department; or</li> <li>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</li> </ul> </li> <li>(b) any Personal Data for which the Department is the Data Controller;</li> </ul>
"DfE"	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 <sup>th</sup> 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”	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.
“Industry Good Standard”	
“GSC”	means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a>
“GSCP”	
“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)”	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.
“IT Health Check (ITHC)”	
“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 <a href="https://www.ncsc.gov.uk">https://www.ncsc.gov.uk</a>
“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 customers 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. 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).
- 1.3. The Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4. The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service, and will handle 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).

- 1.5. 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.
- 1.6. 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.
- 1.7. 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.
- 1.8. 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.
- 1.9. 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.
- 1.10. 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.
- 1.11. 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.
- 1.12. 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.
- 1.13. 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.
- 1.14. All Contractor or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.

- 1.15. 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.
- 1.16. 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.
- 1.17. 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.
- 1.18. 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.
- 1.19. 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.
- 1.20. 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.
- 1.21. 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 DfE 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 Term the Contractor does not meet any of the Guarantee Criteria, at the Departments discretion, the Contractor shall procure 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 ABI Model Form of Guarantee Bond or equivalent bond 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 7.4, 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 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.
- 2.2. 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.
- 2.3. 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 2.2 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.
- 2.4. 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.

### **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.

## ANNEX 1 TO SCHEDULE 5 - CONTRACT CHANGE NOTE PRO FORMA

### Contract Change Note for the Contract Change Procedure

Contract Reference Number: [unique reference number]  
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 Call-off Contract for the provision of National Roll-Out of the Early Career Framework services 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 18 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:  
Emma Wharram  
[emma.wharram@education.gov.uk](mailto:emma.wharram@education.gov.uk)
2. The contact details of the Contractor's Data Protection Officer are:  
[Name]  
[Contact]
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 17.1
Subject matter of the processing	The processing is needed in order to ensure that the Contractor can effectively deliver the contract to provide the design and delivery of a training programme to improve early career teachers' confidence in teaching and thereby improve the provision of education in England's schools.
Duration of the processing	The processing will take place throughout the lifetime of the contract.
Nature and purposes of the processing	<p>Nature – 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>Purpose – the contractor has an obligation to process data in the nature outlined above in order to fulfil the contractual requirements.</p>
Type of Personal Data being Processed	<p>The following Personal Data will be collected:</p> <ul style="list-style-type: none"> <li>• Teacher Reference Number (TRN)</li> <li>• Full name</li> <li>• Gender</li> <li>• Ethnicity</li> <li>• Email address(es)</li> <li>• Telephone number(s)</li> <li>• Home address</li> <li>• Date of birth (if available)</li> <li>• Job role</li> <li>• School (Workplace) URN</li> <li>• School (Workplace) Name</li> <li>• School (Workplace) Address</li> <li>• School (Workplace) Postcode</li> <li>• Programme delivery region</li> <li>• Programme name</li> <li>• Cohort</li> </ul>

	<ul style="list-style-type: none"> <li>• Confirmation if Participant has been “inactive” or “exited” early from the programme and the reason for this.</li> <li>• Confirmation if Participant has gained promotion (to include promotion date (month/year), role and school)</li> </ul>
Categories of Data Subject	<p>Early career teachers, their mentors, school induction leads and school leaders involved in ECTs’ enrolment onto the programme. For school leaders in the latter category, the following data will <b>not</b> be collected:</p> <ul style="list-style-type: none"> <li>• Teacher Reference Number (TRN)</li> <li>• Gender</li> <li>• Ethnicity</li> <li>• Home address</li> <li>• Date of birth</li> <li>• Confirmation if Participant has been “inactive” or “exited” early from the programme and the reason for this.</li> </ul> <p>Confirmation if Participant has gained promotion (to include promotion date (month/year), role and school)</p>
<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.</p> <p>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>

## **SCHEDULE 7: IMPLEMENTATION PLAN**

[insert implementation plan]

## SCHEDULE 8: STAFF TRANSFER

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Former Contractor”</b>	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 (or any sub-contractor of any such sub-contractor);
<b>“New Fair Deal”</b>	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including: (i) any amendments to that document immediately prior to the Relevant Transfer Date; (ii) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Contractor by the Department;
<b>“Notified Sub-contractor”</b>	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Department Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date;
<b>“Replacement Sub-contractor”</b>	a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Service Transfer”</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-contractor to a Replacement Contractor or a Replacement Sub-contractor;
<b>“Service Transfer Date”</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>“Staffing Information”</b>	in relation to all persons identified on the Contractor's Provisional Contractor Personnel List or Contractor's Final Contractor Personnel List, as the case may be, such information as the Department may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format: (a) their ages, dates of commencement of employment or engagement, gender and place of work; (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party;

- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

**“Statutory Schemes”**

means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;

**“Contractor's Final Contractor Personnel List”**

a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

**“Contractor's Provisional Contractor Personnel List”**

a list prepared and updated by the Contractor of all Contractor Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;

**“Transferring Department Employees”**

those employees of the Department to whom the Employment Regulations will apply on the Relevant Transfer Date;

**“Transferring Former Contractor Employees”**

in relation to a Former Contractor, those employees of the Former Contractor to whom the Employment Regulations will apply on the Relevant Transfer Date; and

**“Transferring Contractor Employees”**

those employees of the Contractor and/or the Contractor's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

## 2 INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Department, Former Contractor, Replacement Contractor or Replacement Sub-contractor, as the case may be.

## **PART A: TRANSFERRING DEPARTMENT EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1 RELEVANT TRANSFERS**

1.1 The Department and the Contractor agree that:

- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Department Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Department and the Transferring Department Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Contractor and/or any Notified Sub-contractor and each such Transferring Department Employee.

1.2 The Department shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Department Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Department; and (ii) the Contractor and/or any Notified Sub-contractor (as appropriate).

### **2 DEPARTMENT INDEMNITIES**

2.1 Subject to Paragraph 2.2, the Department shall indemnify the Contractor and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Department in respect of any Transferring Department Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Department Employee occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Department before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Department Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Department Employees which the Department is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Department Employees arising from or connected with any failure by the Department to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory Department in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Department Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Department Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Department to the Contractor and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory Department relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of the Department to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Department Employees arising before the Relevant Transfer Date;

- (f) any claim made by or in respect of any person employed or formerly employed by the Department other than a Transferring Department Employee for whom it is alleged the Contractor and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
  - (g) any claim made by or in respect of a Transferring Department Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Department Employee relating to any act or omission of the Department in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Department Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - (b) arising from the failure by the Contractor or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Department as a Transferring Department Employee claims, or it is determined in relation to any person who is not identified by the Department as a Transferring Department Employee, that his/her contract of employment has been transferred from the Department to the Contractor and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Contractor shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Department; and
  - (b) the Department may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Contractor and/or any Notified Sub-contractor, or take such other reasonable steps as the Department considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Department, the Contractor shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Contractor and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Contractor and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Department shall indemnify the Contractor and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Contractor takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- (a) shall not apply to:

- (i) any claim for:
  - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or
- (ii) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Contractor and/or any Notified Sub-contractor (as appropriate) to the Department within 6 months of the Effective Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Department nor dismissed by the Contractor and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Contractor and/or any Notified Sub-contractor and the Contractor shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### **3 CONTRACTOR INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2, the Contractor shall indemnify the Department against any Employee Liabilities arising from or as a result of:
- (a) any act or omission by the Contractor or any Sub-contractor in respect of any Transferring Department Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Department Employee whether occurring before, on or after the Relevant Transfer Date;
  - (b) the breach or non-observance by the Contractor or any Sub-contractor on or after the Relevant Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Department Employees; and/or
    - (ii) any custom or practice in respect of any Transferring Department Employees which the Contractor or any Sub-contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Department Employees arising from or connected with any failure by the Contractor or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - (d) any proposal by the Contractor or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Department Employees to their material detriment on or after their transfer to the Contractor or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Department Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
  - (e) any statement communicated to or action undertaken by the Contractor or any Sub-contractor to, or in respect of, any Transferring Department Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Department in writing;
  - (f) any proceeding, claim or demand by HMRC or other statutory Department in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Department Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Department Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Department to the Contractor or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Department Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Department Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Department Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Department's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Contractor or any Sub-Contractor to comply with its obligations under paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Department whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Department's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Department Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Department and the Contractor.

#### **4 INFORMATION**

- 4.1 The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Department in writing such information as is necessary to enable the Department to carry out its duties under Regulation 13 of the Employment Regulations. The Department shall promptly provide to the Contractor and each Notified Sub-contractor in writing such information as is necessary to enable the Contractor and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Contractor of employees whose employment begins after the Relevant Transfer Date, and the Contractor undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Contractor shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Department relating to pensions in respect of any Transferring Department Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - (d) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

## **6 PENSIONS**

- 6.1 The Contractor shall, and/or shall procure that each of its Sub-contractors shall, comply with:
- (a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
  - (b) Part D of the Pensions Annex to this Staff Transfer Schedule.

## **PART B: TRANSFERRING FORMER CONTRACTOR EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1 RELEVANT TRANSFERS**

1.1 The Department and the Contractor agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Contractor Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Contractor and the Transferring Former Contractor Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Contractor and/or Notified Sub-contractor and each such Transferring Former Contractor Employee.

1.2 The Department shall procure that each Former Contractor shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Contractor Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Contractor shall make, and the Department shall procure that each Former Contractor makes, any necessary apportionments in respect of any periodic payments.

### **2 FORMER CONTRACTOR INDEMNITIES**

2.1 Subject to Paragraph 2.2, the Department shall procure that each Former Contractor shall indemnify the Contractor and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Former Contractor in respect of any Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Contractor arising before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Contractor Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Former Contractor Employees which the Former Contractor is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory Department in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Contractor Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions

relating to the Transferring Former Contractor Employees in respect of the period to (but excluding) the Relevant Transfer Date;

- (e) any claim made by or in respect of any person employed or formerly employed by the Former Contractor other than a Transferring Former Contractor Employee for whom it is alleged the Contractor and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Former Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Contractor Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Contractor and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Department as a Transferring Former Contractor Employee claims, or it is determined in relation to any person who is not identified by the Department as a Transferring Former Contractor Employee, that his/her contract of employment has been transferred from a Former Contractor to the Contractor and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Contractor shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Department and, where required by the Department, to the Former Contractor; and
- (b) the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor and/or the Notified Sub-contractor or take such other reasonable steps as the Former Contractor considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Contractor and/or the Department, the Contractor shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Contractor and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Contractor and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Department shall procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities

arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
  - (i) any claim for:
    - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or
- (ii) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Contractor and/or any Notified Sub-contractor (as appropriate) to the Department and, if applicable, the Former Contractor, within 6 months of the Effective Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Contractor nor dismissed by the Contractor and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Contractor or Notified Sub-contractor and the Contractor shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

### **3 CONTRACTOR INDEMNITIES AND OBLIGATIONS**

3.1 Subject to Paragraph 3.2, the Contractor shall indemnify the Department and/or the Former Contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Contractor or any Sub-contractor in respect of any Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Contractor or any Sub-contractor on or after the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Contractor Employee; and/or
  - (ii) any custom or practice in respect of any Transferring Former Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Contractor or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Contractor Employees to their material detriment on or after their transfer to the Contractor or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Contractor or a Sub-contractor to, or in respect of, any Transferring Former Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Department and/or the Former Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory Department in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory Department relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Contractor's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
  - (i) a failure by the Contractor or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Contractor's failure to comply with its obligations under the Employment Regulations.

3.3 The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Contractor Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Contractor and the Former Contractor.

#### **4 INFORMATION**

4.1 The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Department and/or at the Department's direction, the Former Contractor, in writing such information as is necessary to enable the Department and/or the Former Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Department shall procure that the Former Contractor shall promptly provide to the Contractor and each Notified Sub-contractor in writing such information as is necessary to enable the Contractor and each Notified

Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

## **5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Contractor shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Department relating to pensions in respect of any Transferring Former Contractor Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - (d) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

## **6 PROCUREMENT OBLIGATIONS**

- 6.1 Notwithstanding any other provisions of this Part B, where in this Part B the Department accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the Department's contract with the Former Contractor contains a contractual right in that regard which the Department may enforce, or otherwise so that it requires only that the Department must use reasonable endeavours to procure that the Former Contractor does or does not act accordingly.

## **7 PENSIONS**

- 7.1 The Contractor shall, and shall procure that each Sub-contractor shall, comply with:
- (a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
  - (b) Part D the Pensions Annex to this Staff Transfer Schedule.

## **PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1 PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 The Department and the Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Department and/or any Former Contractor.
- 1.2 If any employee of the Department and/or a Former Contractor claims, or it is determined in relation to any employee of the Department and/or a Former Contractor, that his/her contract of employment has been transferred from the Department and/or the Former Contractor to the Contractor and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Contractor shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Department and, where required by the Department, give notice to the Former Contractor; and
  - (b) the Department and/or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor or the Sub-contractor (as appropriate) or take such other reasonable steps as the Department or Former Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Department and/or the Former Contractor), the Contractor shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Contractor and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

### **2 INDEMNITIES**

- 2.1 Subject to the Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Department shall:
- (a) indemnify the Contractor and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Department referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
  - (b) procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Department and/or the Former Contractor as appropriate nor dismissed by the Contractor and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Contractor and/or the Sub-contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

- 2.3 Where any person remains employed by the Contractor and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-contractor and the Contractor shall indemnify the Department and any Former Contractor, and shall procure that the Sub-contractor shall indemnify the Department and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-contractor.
- 2.4 The indemnities in Paragraph 2.1:
- (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or
  - (ii) any claim that the termination of employment was unfair because the Contractor and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Contractor and/or any Sub-contractor to the Department and, if applicable, Former Contractor within 6 months of the Effective Date.

### **3 PROCUREMENT OBLIGATIONS**

- 3.1 Where in this Part C the Department accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the Department's contract with the Former Contractor contains a contractual right in that regard which the Department may enforce, or otherwise so that it requires only that the Department must use reasonable endeavours to procure that the Former Contractor does or does not act accordingly.

## PART D: PENSIONS

### 1 DEFINITIONS

In this Part D and Part E, the following words have the following meanings and they shall supplement Schedule 1: Definitions, and shall be deemed to include the definitions set out in the Annexes:

<b>"Actuary"</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>"Admission Agreement"</b>	either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
<b>"Broadly Comparable"</b>	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and <b>"Broad Comparability"</b> shall be construed accordingly;</p>
<b>"CSPA"</b>	the schemes as defined in Annex D1 to this Part D;
<b>"Direction Letter"</b>	has the meaning in Annex D2 to this Part D;
<b>"Fair Deal Employees"</b>	<p>any of:</p> <p>(i) Transferring Department Employees;</p> <p>(ii) Transferring Former Contractor Employees; and/or</p> <p>(iii) employees who are not Transferring Department Employees or Transferring Former Contractor Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Contractor or a Sub-Contractor, and whose employment is not terminated in accordance with the provisions of paragraphs 2.3 (d) of Parts A or B or paragraph 1.2 (d) of Part C;</p> <p>(iv) where the Former Contractor becomes the Contractor employees;</p> <p>who at the Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Department;</p>
<b>"Fair Deal Schemes"</b>	the relevant Statutory Scheme or a Broadly Comparable pension scheme;
<b>"Fund Actuary"</b>	a Fund Actuary as defined in Annex D3 to this Part D;

**"LGPS"** the schemes as defined in Annex D3 to this Part D; and

**"NHSPS"** the schemes as defined in Annex D2 to this Part D.

## **2 PARTICIPATION**

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The Contractor undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, if necessary) as may be required to enable the Contractor to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Contractor undertakes:
- (a) to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
  - (b) to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

## **3 PROVISION OF INFORMATION**

- 3.1 The Contractor undertakes to the Department:
- (a) to provide all information which the Department may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
  - (b) not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Department (such consent not to be unreasonably withheld or delayed).

## **4 INDEMNITIES**

- 4.1 The Contractor undertakes to the Department to indemnify and keep indemnified NHS Pensions, the Department and/or any Replacement Contractor and/or any Replacement Sub-Contractor on demand from and against all and any Losses whatsoever:
- (a) arising out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Contractor of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement; and/ or
  - (b) which relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
- 4.2 The Contractor hereby indemnifies NHS Pensions, the Department and/or any Replacement Contractor and/or Replacement Sub-Contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Contractor and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
- (a) relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; and/or
  - (b) arise out of the failure of the Contractor and/or any relevant Sub-Contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.
- 4.3 The indemnities in this Part D and its Annexes:
- (a) shall survive termination of this Contract; and

- (b) shall not be affected by the caps on liability contained in Clause 25 (Limitation of Liability).

## **5 DISPUTES**

- 5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute between the Department and/or the Contractor, or between their respective actuaries, or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Department and/or the Contractor be referred to an independent Actuary:
  - (a) who will act as an expert and not as an arbitrator;
  - (b) whose decision will be final and binding on the Department and/or the Contractor; and
  - (c) whose expenses shall be borne equally by the Department and/or the Contractor unless the independent Actuary shall otherwise direct.

## **6 THIRD PARTY RIGHTS**

- 6.1 The Parties agree Clause 43 (Third Party Rights) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her by the Contractor under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
- 6.2 Further, the Contractor must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-Contractor in his or her own right under section 1(1) of the CRTPA.

## **7 BREACH**

- 7.1 The Contractor agrees to notify the Department should it breach any obligations it has under this Part D and agrees that the Department shall be entitled to terminate its Contract for material Default in the event that the Contractor:
  - (a) commits an irremediable breach of any provision or obligation it has under this Part D; or
  - (b) commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Department giving particulars of the breach and requiring the Contractor to remedy it.

## **8 TRANSFER TO ANOTHER EMPLOYER/ SUB- CONTRACTORS**

- 8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Contractor shall or shall procure that any relevant Sub-Contractor shall:
  - (a) consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
  - (b) procure that the employer to which the Fair Deal Employees are transferred (the "New Employer") complies with the provisions of this Part D and its Annexes provided that references to the "Contractor" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

## **9 PENSION ISSUES ON EXPIRY OR TERMINATION**

- 9.1 The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

## **10 BROADLY COMPARABLE PENSION SCHEMES**

- 10.1 If either:
  - (a) the terms of any of paragraphs 2.2 of Annex D1: CSPA, 5.2 of Annex D2: NHSPA and or 4 of Annex D3: LGPS apply; or

- (b) the Department agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Contractor (and/or its Sub-Contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Contractor must (and must, where relevant, procure that each of its Sub-Contractors will) ensure that, with effect from the Relevant Transfer Date or, if later, cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Department.

10.2 Where the Contractor has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of paragraph 10.1, the Contractor shall (and shall procure that any of its Sub-Contractors shall):

- (a) supply to the Department details of its (or its Sub-Contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than twenty eight (28) days before the Relevant Transfer Date;
- (b) fully fund any such Broadly Comparable pension scheme on a past service reserve basis which is aligned to the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department and is subject to the underpin for the period ending on the Service Transfer Date;
- (c) instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Contractor and/or NHS Pension and/or CSPA and/or the relevant Administering Department and/or the Department may reasonably require, to enable the Replacement Contractor to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection following a Service Transfer;
- (d) provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Contractor and/or relevant Sub-Contractor and are still eligible for New Fair Deal protection in the event that the Contractor and/or Sub-Contractor's Broadly Comparable pension scheme is terminated;
- (e) allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("Shortfall"), the Contractor or the Sub-Contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Contractor and any Sub-Contractor, the Shortfall shall be paid by the Contractor; and
- (f) indemnify the Department and/or NHS Pension and/or CSPA and/or the relevant Administering Department and/or on demand for any failure to pay the Shortfall as required under paragraph (e) above.

## Annex D1: CSPA

### 1 DEFINITIONS

In this Annex D1: CSPA to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

<b>"CSPA Admission Agreement"</b>	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPA in respect of the Services;
<b>"CSPA Eligible Employee"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPA Admission Agreement;
<b>"CSPA"</b>	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; [the Designated Stakeholder Pension Scheme] <sup>1</sup> and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

### 2 FUTURE SERVICE BENEFITS

- 2.1 The Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.
- 2.2 The Contractor undertakes that should it cease to participate in the CSPA for whatever reason at a time when it has CSPA Eligible Employees, that it will, at no extra cost to the Department, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPA Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPA on the date the CSPA Eligible Employees ceased to participate in the CSPA.

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<sup>1</sup> It is anticipated that the Designated Stakeholder Pension Scheme will no longer be available from September 2018

## Annex D2: NHSPS

### 1 DEFINITIONS

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

**"Direction Letter"**

an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Contractor or a Sub-Contractor of the Contractor (as appropriate) relating to the terms of participation of the Contractor or Sub-Contractor in the NHSPS in respect of the NHSPS Eligible Employees;

**"NHSPS Eligible Employees"**

each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the Department, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Contractor who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Contractor (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Department, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Contractor),

and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).

For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;

**"NHS Body"**

has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;

<b>"NHS Pensions"</b>	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
<b>"NHSPS"</b>	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
<b>"NHS Pension Scheme Arrears"</b>	any failure on the part of the Contractor or its Sub-Contractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;
<b>"NHS Pension Scheme Regulations"</b>	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
<b>"NHS Premature Retirement Rights"</b>	rights to which any Fair Deal Employee (had they remained in the employment of the Department, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
<b>"Pension Benefits"</b>	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and
<b>"Retirement Benefits Scheme"</b>	a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

## 2 MEMBERSHIP OF THE NHSPS

- 2.1 In accordance with New Fair Deal, the Contractor and/or any of its Sub-Contractors to which the employment of any NHSPS Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible Employees to retain either continuous active membership of or eligibility for, the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 2.2 The Contractor must supply to the Department by or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.
- 2.3 The Contractor must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Eligible Employees have a contractual right to continuous active membership of or

eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter.

- 2.4 The Contractor will (and will procure that its Sub-Contractors (if any) will) comply with the terms of the Direction Letter, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.
- 2.5 Where any employee omitted from the Direction Letter supplied in accordance with paragraph 2 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Contractor will (and will procure that its Sub-Contractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.6 The Contractor will (and will procure that its Sub-Contractors (if any) will) as soon as reasonably practicable and at its (or its Sub-Contractor's) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.

### **3 FUTURE SERVICE BENEFITS IN THE NHSPS**

- 3.1 The Contractor will procure that with effect from the Relevant Transfer Date the NHSPS Eligible Employees shall be either eligible for or remain in continuous active membership of (as the case may be) the NHSPS for employment from (and including) the Relevant Transfer Date.

### **4 NHS PREMATURE RETIREMENT RIGHTS**

- 4.1 From the Relevant Transfer Date until the Service Transfer Date, the Contractor must provide (and/or must ensure that its Sub-Contractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Eligible Employees that are identical to the benefits they would have received had they remained employees of the Department, an NHS Body or other employer which participates automatically in the NHSPS.

### **5 BREACH AND CANCELLATION OF ANY DIRECTION LETTER(S) AND RIGHT OF SET-OFF**

- 5.1 The Contractor agrees that the Department is entitled to make arrangements with NHS Pensions for the Department to be notified if the Contractor (or its Sub-Contractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the Contractor shall notify the Department in the event that it (or its Sub-Contractor) breaches the terms of its Direction Letter.
- 5.2 If the Department is entitled to terminate the Contract or the Contractor (or its Sub-Contractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Department may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Contractor (or any such Sub-Contractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Department. The provisions of paragraph 10 (Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Contractor or its Sub-Contractors.
- 5.3 In addition to the Department's right to terminate the Contract, if the Department is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Department will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.

### **6 COMPENSATION**

- 6.1 If the Contractor (or its Sub-Contractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:
  - (a) membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or
  - (b) access to a Broadly Comparable pension scheme,the Department may in its sole discretion permit the Contractor (or any of its Sub-Contractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Contractor (or Sub-Contractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS

Eligible Employees. The Contractor must meet (or must procure that the relevant Sub-Contractor meets) the costs of the Department determining whether the level of compensation offered is reasonable in the circumstances.

- 6.2 This flexibility for the Department to allow compensation in place of Pension Benefits is in addition to and not instead of the Department's right to terminate the Contract.

## **7 CONTRACTOR INDEMNITIES**

- 7.1 The Contractor must indemnify and keep indemnified the Department and any Replacement Contractor against all Losses arising out of any claim by any NHSPS Eligible Employee that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.
- 7.2 The Contractor must indemnify and keep indemnified the Department, NHS Pensions and any Replacement Contractor against all Losses arising out of the Contractor (or its Sub-Contractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Contract Period.

## **8 SUB-CONTRACTORS**

- 8.1 If the Contractor enters into a Sub-Contract for the delivery of all or part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Sub-Contractor in identical terms as those imposed on the Contractor in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:
- (a) if the Contractor has secured a Direction Letter, the Sub-Contractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Sub-Contractor as a condition of being awarded the Sub-Contract and the Contractor shall be responsible for ensuring that the Department receives a complete copy of each such Sub-Contractor direction letter as soon as reasonably practicable; or
  - (b) if, in accordance with paragraph 5.2 of this Annex, the Contractor has offered the NHSPS Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHSPS, the Sub-Contractor either secures a Direction Letter in respect of the NHSPS Eligible Employees or (with the prior consent of the Department) provides NHSPS Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHSPS whereupon the provisions of paragraph 10.2 of Part D above (Broadly Comparable Scheme) shall apply.
- 8.2 The Contractor shall procure that each Sub-Contractor provides indemnities to the Department, NHS Pensions and/or any Replacement Contractor and/or Replacement Sub-Contractor that are identical to the indemnities set out in paragraph 7 of this Annex B. Where a Sub-Contractor fails to satisfy any claim made under such one or more indemnities, the Contractor will be liable for satisfying any such claim as if it had provided the indemnity itself.

## Annex D3: LGPS

### 1 DEFINITIONS

In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

<b>"Administering Department"</b>	in relation to <b>the Fund [insert name]</b> , the relevant Administering Department of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
<b>"Fund Actuary"</b>	the actuary to a Fund appointed by the Administering Department of that Fund;
<b>"Fund"</b>	<b>[insert name], a pension fund within the LGPS;</b>
<b>"LGPS"</b>	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
<b>"LGPS Admission Agreement"</b>	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
<b>"LGPS Admission Body"</b>	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
<b>"LGPS Eligible Employees"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and
<b>"LGPS Regulations"</b>	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

### 2 CONTRACTOR TO BECOME AN LGPS ADMISSION BODY

- 2.1 Where the Contractor employs any LGPS Eligible Employees from a Relevant Transfer Date, the Contractor shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Department which will have effect from and including the Relevant Transfer Date.
- 2.2 The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.
- 2.3 The Contractor shall provide any indemnity, bond or guarantee required by an Administering Department in relation to an LGPS Admission Agreement.

- 2.4 The Contractor shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

### **3 RIGHT OF SET-OFF**

- 3.1 The Department shall have a right to set off against any payments due to the Contractor under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Contractor (or from any relevant Sub-Contractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

### **4 CONTRACTOR CEASES TO BE AN LGPS ADMISSION BODY**

- 4.1 If the Contractor employs any LGPS Eligible Employees from a Relevant Transfer Date and the Contractor either cannot or does not participate in the LGPS, the Contractor shall offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.

### **5 DISCRETIONARY BENEFITS**

- 5.1 Where the Contractor is an LGPS Admission Body, the Contractor shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer's written policy in relation to such benefits at the time of the Relevant Transfer Date.

## **PART E: EMPLOYMENT EXIT PROVISIONS**

### **1 PRE-SERVICE TRANSFER OBLIGATIONS**

- 1.1 The Contractor agrees that within 20 Working Days of the earliest of:
- (a) receipt of a notification from the Department of a Service Transfer or intended Service Transfer;
  - (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
  - (c) the date which is 12 months before the end of the Contract Period; and
  - (d) receipt of a written request of the Department at any time (provided that the Department shall only be entitled to make one such request in any 6 month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Contractor's Provisional Contractor Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Contractor Personnel List and it shall provide an updated Contractor's Provisional Contractor Personnel List at such intervals as are reasonably requested by the Department.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Contractor shall provide to the Department or at the direction of the Department to any Replacement Contractor and/or any Replacement Sub-contractor:
- (a) the Contractor's Final Contractor Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and
  - (b) the Staffing Information in relation to the Contractor's Final Contractor Personnel List (insofar as such information has not previously been provided).
- 1.3 The Department shall be permitted to use and disclose information provided by the Contractor under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-contractor.
- 1.4 The Contractor warrants, for the benefit of the Department, any Replacement Contractor, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Contractor agrees, that it shall not, and agrees to procure that each Sub contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Contractor Personnel List and shall not without the approval of the Department (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any Contractor Personnel listed on the Contractor Provisional Contractor Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
  - (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Contractor Personnel (including pensions and any payments connected with the termination of employment);
  - (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;
  - (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Contractor Personnel List;
  - (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

- (f) terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Contractor Personnel List save by due disciplinary process, and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Department or, at the direction of the Department, any Replacement Contractor and any Replacement Sub-contractor of any notice to terminate employment given by the Contractor or relevant Sub-contractor or received from any persons listed on the Contractor's Provisional Contractor Personnel List regardless of when such notice takes effect.
- 1.6 During the Contract Period, the Contractor shall provide, and shall procure that each Sub contractor shall provide, to the Department any information the Department may reasonably require relating to the manner in which the Services are organised, which shall include:
- (a) the numbers of employees engaged in providing the Services;
  - (b) the percentage of time spent by each employee engaged in providing the Services;
  - (c) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (Pensions) of this Schedule 9 (Staff Transfer)(as appropriate); and
  - (d) a description of the nature of the work undertaken by each employee by location.
- 1.7 The Contractor shall provide, and shall procure that each Sub contractor shall provide, all reasonable cooperation and assistance to the Department, any Replacement Contractor and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Department or, at the direction of the Department, to any Replacement Contractor and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Contractor's Final Contractor Personnel List who is a Transferring Contractor Employee:
- (a) the most recent month's copy pay slip data;
  - (b) details of cumulative pay for tax and pension purposes;
  - (c) details of cumulative tax paid;
  - (d) tax code;
  - (e) details of any voluntary deductions from pay; and
  - (f) bank/building society account details for payroll purposes.

## **2 EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 The Department and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-contractor. Such change in the identity of the Contractor of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Department and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Contractor Employee.
- 2.2 The Contractor shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall

perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-contractor.

- 2.3 Subject to Paragraph 2.4, the Contractor shall indemnify the Department and/or the Replacement Contractor and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Contractor or any Sub-contractor in respect of any Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee whether occurring before, on or after the Service Transfer Date;
  - (b) the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Contractor Employees; and/or
    - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
  - (d) any proceeding, claim or demand by HMRC or other statutory Department in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising on and before the Service Transfer Date; and
    - (ii) in relation to any employee who is not identified in the Contractor's Final Contractor Personnel list, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor to the Department and/or Replacement Contractor and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising on or before the Service Transfer Date;
  - (e) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date);
  - (f) any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-contractor other than a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel list for whom it is alleged the Department and/or the Replacement Contractor and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

- (g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Department and/or Replacement Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
  - (b) arising from the Replacement Contractor's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Contractor's Final Contractor Personnel list claims, or it is determined in relation to any person who is not identified in the Contractor's Final Contractor Personnel list, that his/her contract of employment has been transferred from the Contractor or any Sub-contractor to the Replacement Contractor and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- (a) the Department shall procure that the Replacement Contractor shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Contractor; and
  - (b) the Contractor may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-contractor, the Department shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved
- the Department shall advise the Replacement Contractor and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- (a) shall not apply to:
    - (i) any claim for:

- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Contractor and/or Replacement Sub-contractor; or

- (ii) any claim that the termination of employment was unfair because the Replacement Contractor and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Contractor and/or Replacement Sub-contractor to the Contractor within 6 months of the Service Transfer Date .

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Contractor or any Sub-contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Contractor Employee.

2.11 The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Contractor's Final Contractor Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Contractor and/or any Sub-contractor; and
- (b) the Replacement Contractor and/or the Replacement Sub-contractor.

2.12 The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Department and any Replacement Contractor and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Department, the Replacement Contractor and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Department shall procure that the Replacement Contractor and/or Replacement Sub-contractor, shall promptly provide to the Contractor and each Sub-contractor in writing such information as is necessary to enable the Contractor and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13 Subject to Paragraph 2.14, the Department shall procure that the Replacement Contractor indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Replacement Contractor and/or Replacement Sub-contractor in respect of any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee ;
- (b) the breach or non-observance by the Replacement Contractor and/or Replacement Sub-contractor on or after the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List; and/or

- (ii) any custom or practice in respect of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List which the Replacement Contractor and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List arising from or connected with any failure by the Replacement Contractor and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Contractor and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List on or after their transfer to the Replacement Contractor or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Contractor's Final Contractor Personnel List who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-contractor to, or in respect of, any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory Department in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising after the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor or Sub-contractor, to the Replacement Contractor or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Contractor or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-contractor in relation to obligations under Regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

## SCHEDULE 9: KEY PERSONNEL AND SUB-CONTRACTORS

### Key Personnel

The individuals listed in the table below are Key Personnel:

Name	Role	Period of Involvement

### Key Sub-Contractors

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

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

## **SCHEDULE 10: COMMERCIALLY SENSITIVE INFORMATION**

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

<b>Commercially Sensitive Information</b>	<b>Duration of Sensitivity</b>

- 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:

<b>“Business Continuity Plan”</b>	has the meaning given in Paragraph 2.2(a)(ii);
<b>“Business Continuity Services”</b>	has the meaning given in Paragraph 4.2(b);
<b>“Department”</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:  (a) Government Department; or (b) Non-Ministerial Department.
<b>“Disaster”</b>	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;
<b>“Disaster Recovery Plan”</b>	has the meaning given in Paragraph 2.2(a)(iii);
<b>“Disaster Recovery Services”</b>	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
<b>“Disaster Recovery System”</b>	the system identified by the Contractor in the Contractor Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
<b>“Insolvency Continuity Plan”</b>	has the meaning given in Paragraph 2.2(a)(iv).
<b>“Related Service Provider”</b>	any person who provides services to the Department in relation to this Agreement from time to time;
<b>“Review Report”</b>	has the meaning given in Paragraphs 7.2(a) to 7.2(c);
<b>“Service Continuity Plan”</b>	means the plan prepared pursuant to Paragraph 2 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 plan, which shall detail the processes and arrangements that the Contractor shall follow to:
- (a) 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
  - (b) the recovery of the Services in the event of a Disaster.
- 2.2 The Service Continuity Plan shall:

- (a) be divided into four parts:
    - (i) Part A which shall set out general principles applicable to the Service Continuity Plan;
    - (ii) Part B which shall relate to business continuity (the “**Business Continuity Plan**”);
    - (iii) Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”);
    - (iv) 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
  - (b) 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:
- (a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
  - (b) 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:
- (a) the Department shall inform the Contractor in writing of its reasons for its rejection; and
  - (b) 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 2.3 and this Paragraph 2.4 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:
- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
  - (b) 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;
  - (c) 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;
  - (d) 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;
  - (e) 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;
  - (f) contain a risk analysis, including:
    - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
    - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;

- (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
  - (iv) identification of risks arising from an Insolvency Event of the Contractor, any Key Sub-contractors and/or Contractor Group member; and
  - (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
  - (h) set out key contact details (including roles and responsibilities) for the Contractor (and any Sub-contractors) and for the Department;
  - (i) identify the procedures for reverting to “normal service”;
  - (j) 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;
  - (k) 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
  - (l) 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:
- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;
  - (b) 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;
  - (c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
  - (d) 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:
- (a) 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
  - (b) 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:
- (a) address the various possible levels of failures of or disruptions to the Services;

- (b) 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"**);
- (c) 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
- (d) 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:
  - (a) the technical design and build specification of the Disaster Recovery System;
  - (b) 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:
    - (i) data centre and disaster recovery site audits;
    - (ii) backup methodology and details of the Contractor's approach to data back-up and data verification;
    - (iii) identification of all potential disaster scenarios;
    - (iv) risk analysis;
    - (v) documentation of processes and procedures;
    - (vi) hardware configuration details;
    - (vii) network planning including details of all relevant data networks and communication links;
    - (viii) invocation rules;
    - (ix) Service recovery procedures; and
    - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
  - (c) 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;
  - (d) 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;
  - (e) access controls to any disaster recovery sites used by the Contractor in relation to its obligations pursuant to this Schedule; and
  - (f) 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:
- (a) 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;
  - (b) 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;
  - (c) plans to manage and mitigate identified risks;
  - (d) 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;
  - (e) 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
  - (f) 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):
- (a) on a regular basis and as a minimum once every 6 months;
  - (b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
  - (c) within 14 days of a Financial Distress Event;
  - (d) within 30 days of a Corporate Change Event; and
  - (e) where the Department requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) 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:
- (a) the findings of the review;

- (b) any changes in the risk profile associated with the Services; and
  - (c) 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:
- (a) review and comment on the Review Report and the Contractor's Proposals as soon as reasonably practicable; and
  - (b) 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:
- (a) the Department shall inform the Contractor in writing of its reasons for its rejection; and
  - (b) 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 7.3 and this Paragraph 7.4 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 8.2, 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:
- (a) the outcome of the test;
  - (b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
  - (c) 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:
- (a) 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
  - (b) 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:

<b>“Applicable Contractor Personnel”</b>	<p>any Contractor Personnel who:</p> <ul style="list-style-type: none"><li>(i) at the Termination Date:<ul style="list-style-type: none"><li>a) are employees of the Contractor;</li><li>b) are Dedicated Contractor Personnel;</li><li>c) have not transferred (and are not in scope to transfer at a later date) to the Department or the Replacement Contractor as a result of the operation of TUPE; and</li></ul></li><li>(ii) are dismissed or given notice of dismissal by the Contractor within:<ul style="list-style-type: none"><li>d) 40 Business Days of the Termination Date; or</li><li>e) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and</li></ul></li><li>(iii) have not resigned or given notice of resignation prior to the date of their dismissal by the Contractor; and</li><li>(iv) the Contractor can demonstrate to the satisfaction of the Department:<ul style="list-style-type: none"><li>a) are surplus to the Contractor's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;</li><li>b) are genuinely being dismissed for reasons of redundancy; and</li><li>c) 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;</li></ul></li></ul>
<b>“Assets”</b>	<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>
<b>“Breakage Costs Payment”</b>	<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>
<b>“Contract Breakage Costs”</b>	<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>
<b>“Dedicated Contractor Personnel”</b>	<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;

<b>“Former Contractor”</b>	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
<b>“Redundancy Costs”</b>	<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>
<b>“Relevant Transfer”</b>	a transfer of employment to which TUPE applies.
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.
<b>“Request for Estimate”</b>	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;
<b>“Termination Estimate”</b>	has the meaning given in Paragraph 8.2;
<b>“Transferring Former Contractor Employees”</b>	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 Term 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 Contractor 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 customers; 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 25.11 (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 3 (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 27.2 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 Term 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	£ [to be inserted at the call-off stage]
Anytime in the second Contract Year	£ [to be inserted at the call-off stage]
Anytime in third Contract Year	£ [to be inserted at the call-off stage]
Anytime in fourth Contract Year	£ [to be inserted at the call-off stage]

## **SCHEDULE 13 – CONDUCT OF CLAIMS**

### **1. INDEMNITIES**

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “Indemnifier”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “Beneficiary”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “Claim”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
  - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
  - (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
  - (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

### **2. SENSITIVE CLAIMS**

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public’s perception of the Beneficiary (a “Sensitive Claim”), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary’s prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

### **3. RECOVERY OF SUMS**

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
  - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

#### **4. MITIGATION**

- 4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.