

**[NAME OF SCHOOL]**

**- AND -**

**[THE CONTRACTOR]**

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**CALL OFF CONTRACT**  
**for the supply of the**  
**National Professional Qualifications Delivery Framework**

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THIS CONTRACT is made on DD MM YYYY

## BETWEEN

1. [Name of School] of [insert address] ("The Customer"); and
  2. [THE CONTRACTOR] (Company No.) whose registered office is at [INSERT ADDRESS] (the "Contractor");
- together, the "Parties"

## WHEREAS:

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

## NOW IT IS HEREBY AGREED AS FOLLOWS:-

### 1 INTERPRETATION

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

"Agent"	means an organisation or individual engaged by the Customer to represent it;
"Assessed Cost"	means the estimated cost of remedying a failure where the Customer requires the Contractor to take action in accordance with clause 9.4
"Affiliate"	in relation to any person, the holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 and Schedule 6 of the Companies Act 2006;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ol style="list-style-type: none"><li>(i) Government Customer;</li><li>(ii) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>(iii) Non-Ministerial Customer; or</li><li>(iv) Executive Agency;</li></ol>

"Charges"	means the Charges made by the Contractor to the Customer in accordance with the Schedule 2 (Pricing and Performance Measures);
"Cohort"	means a group of Teachers that are undertaking an NQP or NPQH Additional Support Offer;
"Cohort Commencement Date"	means the date that the Teachers commence their induction. If this Call Off Contract covers more than one Cohort, it shall be the date that the first Cohort commences.
"Contract Date"	means the date this Contract is duly executed as stated above;
"Confidential Information"	means information as defined in this Contract which includes the Customer'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 Customer"	any contracting Customer as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Customer;
"Contract Period"	shall be the contract duration as set out in clause 2.1;
"Contractor Personnel"	all employees, Agents, consultants, and contractors of the Contractor and/or of any Sub-Contractor engaged by the Contractor;
"the Contractor's Contract Manager"	means [insert name and email address]
"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;

“Customer”	means the School that has placed an Order for Services under the Framework Agreement and is named as a Party to this Contract;
“the Customer’s Contract Manager”	means [insert name] and email address];
“Customer’s Intellectual Property Rights”	means all Intellectual Property Rights comprised in or necessary for or arising from the performance of the Services;
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“DPA 2018”	Data Protection Act 2018;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“Default”	any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:  (a) in the case of the Department, of its employees, servants, agents; or  (b) in the case of the Contractor, of its Subcontractors or any Supplier Personnel,  in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;
“Delivery Plan”	means the Delivery Plan submitted with the Contractor’s Quotation and included in Schedule 1: Part 2 – The Contractor’s Solution;
“the Department”	means the Department of Education and its agencies;
“Digital Platform”	means the Contractor’s technology and ICT systems including any portal that will be used to deliver any part of the Services
“Disclosure and Barring Service or DBS”	the Home Office sponsored safeguarding services that helps employers make safer recruitment decisions and prevent

	unsuitable people from working with vulnerable groups, including children;
"Employee Transfer Date"	means in respect of any 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 Customer in relation to such regulations;
"Existing IPR"	any and all IPR that are owned by or licensed to either Party which are or have been developed independently of the Contract whether prior to the date of the Contract or otherwise.
"Exit Plan"	the plan prepared by the Contractor in accordance with clause 15.11 setting out the Contractor's methodology for achieving an orderly transition of the Services from the contractor to the Customer or a Successor Contractor on the expiry or termination of this Contract;
"Expiry Date"	means [insert date], being the last day of the Contract Period unless the Contract Period is extended in accordance with clause 2;
"Extension Period"	shall have the meaning given to it in clause 2.2;
"External Evaluator"	means the independent evaluator or evaluators appointed by the Customer further to paragraph 15 of Schedule 1 (Part A: The Services);
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Customer 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> <ul style="list-style-type: none"> <li>(a) any industrial action occurring within the Contractor's or any of its Sub-Contractor's organisation, or otherwise involving the Contractor Staff; or</li> <li>(b) the failure by any Sub-Contractor of the Contractor to perform its obligations under any Sub-Contract.</li> </ul>
"Framework Agreement"	means the Framework Agreement dated [DD YYYY] between the Customer 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;
“GDPR”	the General Data Protection Regulation (Regulation (EU) 2016/679)
“Good Industry Practice”	that degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or any Sub-Contractor under the same or similar circumstances;
“Her Majesty's Government”	means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant, or officer of such Government
“ICT”	means information and communications technology.
“Implementation Plan”	means the Delivery Implementation Plan included in Schedule 7;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"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 Claims”	any claim against the Department of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPRs used by or on behalf of the Contractor (including by a Sub-Contractor) in relation to the delivery of the Services save for any such claim to the extent that it is caused by any use by or on behalf of the Department of any IPRs that are relevant to this Contract in combination with any item not supplied or recommended by the Contractor pursuant to this Contract or for a purpose not reasonably to be inferred from the Specification or the provisions of this Contract
“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 13;
"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 Customer 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 13 (TUPE);
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Required Insurances"	means the insurances as set out in clause 9.7;
"the School"	means the organisation named as a Party to this Contract;
"Serious Breach"	means <ul style="list-style-type: none"> <li>(a) any breach referred to as a Serious Breach in the Contract; and/or</li> <li>(b) any breach or breaches which adversely, materially, or substantially affect the performance or delivery of the Services in part or in full, or the provisions of a safe, healthy and supportive learning environment. Serious Breach includes but is not limited to: <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> </li> </ul>

"the Services"	means the services to be performed by the Contractor as described in Schedule 1;
"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 Customer in a Sub-Contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract;
"Sub-Contractor"	the third party with whom the Contractor enters into a Sub-Contract or its servants or Agents and any third party with whom that third party enters into a Sub-Contract or its servants or Agents;
"Sub-processor"	any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract;
"Successor Contractor"	means the Contractor that delivers services that are substantially the same as the Services after the expiry or termination of the Contract;
Termination Date	means the date set out in a termination notice on which this Contract (or a part of it as the case may be) is to terminate;
"Transferring Contractor Employees"	means those employees of the Contractor who are at the Future Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Contract pursuant to TUPE or the Acquired Rights Directive 187/77/EC or otherwise to any Successor Contractor;
"Transfer of Undertakings (Protection of Employment) Regulations 2006 or TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time;
"Variation"	A change top the terms of this Contract agreed in accordance with Schedule 5
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 References to "Contract" mean this contract (and 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 Customer shall have the right to request in writing that the Contract Period be extended for one or more period on one or more occasions but the maximum cumulative Extension Period shall not be longer than the original Contract Period
- 2.3 If the Customer exercises its right to request an extension under clause 2.2, the last date of the Extension Period shall be the new Expiry Date and references to “Expiry Date” shall be interpreted accordingly.

### **3 CONTRACTOR'S OBLIGATIONS**

- 3.1 The Contractor shall promptly and efficiently deliver the Services in accordance with the provisions set out in Schedule 1: Part 1 (The Services), the special conditions set out in Schedule 3 (Additional Clauses) and in accordance with the Schedule 1: Part 2 (the Contractor's Solution). Where there is any conflict between the terms of this Contract and the special conditions set out in Schedule 3, the special conditions shall prevail.
- 3.2 The Contractor shall comply with the accounting and performance measures set out in Schedule 2 (Pricing and Performance Measures).
- 3.3 The Contractor implements quality management arrangements and complies with the Quality Assurance requirements set out in Schedule 2 and in Section 2B – of the Specification to ensure the Services are delivered to a consistent and high standard. The Contractor notifies the Customer as soon as practicable in the event they become aware of any matter(s) which may affect the quality of the Services.
- 3.4 The Contractor attends meetings relating to the Services, Continuous Improvement and the Contractor's performance as set out in the Specification and this Contract. The Contractor is not paid separately for attending such meetings unless expressly set out in the Call Off Order.
- 3.5 The Contractor shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.
- 3.6 In entering into this Contract the Contractor is confirming that:
- 3.6.1 it has read and understood the Customer'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
- 3.6.2 it will deliver the Services by reference to the Contractor Code as dated February 2019 and thereafter as updated from time to time.
- 3.7 NOT USED
- 3.8 NOT USED
- 3.9 NOT USED

### **4 CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer will comply with the payment provisions of Schedule 2: Part 1 (Pricing) provided that the Customer 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 Customer.

### **5 NOT USED**

### **6 MANAGEMENT**

- 6.1 The Contractor shall promptly comply with all reasonable requests or directions of the Customer'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 Customer'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 Customer 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 to 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 Customer 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 the relevant period specified below from the receipt of a valid invoice not exceeding:
- 7.2.1 10 days, where the Sub-Contractor is an SME; or
- 7.2.2 30 days either, where the Sub-Contractor is not an SME, or both the Contractor and the Sub-Contractor are SMEs,
- 7.3 The Contractor shall comply with clause 7.2 and shall provide, at the Customer's request, sufficient evidence to demonstrate compliance.
- 7.4 The Contractor shall take all reasonable steps to satisfy itself that the Contractor Personnel it engages are suitable in all respects to perform the Services.
- 7.5 The Contractor shall give to the Customer 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 Customer may reasonably require.
- 7.6 If the Customer notifies the Contractor that it 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 Customer considers necessary to remedy the situation or, if so required by the Customer, shall remove the said Sub-Contractor from providing the Services and shall provide a suitable replacement (at no cost to the Customer).
- 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 Customer's Contract Manager of proposals to change Sub-Contractors.
- 7.8 The Contractor shall immediately notify the Customer if they have any concerns regarding the propriety of any of its Sub-Contractors in respect of work/services rendered in connection with this Contract.
- 7.9 The Contractor acknowledges that Key Contractor Staff and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Contractor Staff and Key Sub-Contractors listed in Schedule 9 as at the Effective Date.
- 7.10 The Contractor agrees that:
- 7.10.1 Key Contractor Staff shall not be released from supplying the Services without the Customer's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 7.10.2 Any replacements of Key Contractor Staff or Sub-Contractors shall be subject to the Customer's consent and shall be of at least equal status, experience and skills to Key Contractor Staff or Sub-Contractor(s) being replaced and be suitable for the responsibilities of that person or company in relation to the Services.

- 7.11 The Customer shall not unreasonably withhold consent under clauses 7.10. Such consent shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Contractor Staff or Key Sub-Contractors.
- 7.12 The Customer may require the Contractor to remove any Key Contractor Staff or Sub-Contractors who the Customer considers is in any respect unsatisfactory.
- 7.13 The Customer shall not be liable for the cost of replacing any Key Contractor Staff or Sub-Contractors and the Contractor shall indemnify the Customer against all Employment Liabilities that may arise in this respect.
- 7.14 The Contractor, its employees and Sub-Contractors (or their employees), whilst on Customer premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
- 7.15 The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 7.16 The Parties agree that:
- 7.16.1 the Contractor shall both during and after the Contract Period indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Contractor or any Contractor Personnel; and
- 7.16.2 the Customer 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 Customer or any of the Customer's employees, Agents, consultants and contractors.

## **STAFF TRANSFER**

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

## **7A SAFEGUARDING**

- 7A.1 The Contractor shall make arrangements for ensuring that the Provision is provided with a view to safeguarding and promoting the welfare of children receiving education or training. In doing so, the Contractor shall have regard to any guidance published, from time to time, by the Secretary of State for Education, which sets out the expectations in relation to safeguarding practice within schools. References to 'must' in any such guidance shall be treated as 'should' for the purposes of

this Agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Contract.

- 7A.2 The Contractor must carry out appropriate Disclosure and Barring Service checks on all applicants including those from outside the UK for employment where such applicants would be employed to work in regulated activity relating to children or vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) if successful, and must seek additional information about an applicant's conduct.
- 7A.3 The Contractor shall not employ or engage, or continue to employ or engage, any person who is subject to a prohibition order made under section 141B of the Education Act 2002 to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).
- 7A.4 The Contractor shall, in circumstances where it Sub-Contracts the management and / or delivery of the Services under this Contract, ensure that the content of this clause 7A is included in its contract with Sub-Contractors.
- 7A.5 The Contractor and its Sub-Contractors must be able to demonstrate that they have robust record-keeping procedures in respect of safeguarding through checks on record keeping undertaken.
- 7A.6 A breach by the Contractor and / or its Sub-Contractors of this clause 7A shall constitute a Serious Breach of the Contract.

## **8 INTELLECTUAL PROPERTY RIGHTS (IPR)**

- 8.1 Each Party keeps ownership of its own Existing IPR.
- 8.2 Pursuant to clause 2.1 the Contractor gives the Customer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide 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 Customer gives the Contractor a licence to use the Customer'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 Customer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Contractor's Existing IPR and New IPR to enable it to:
  - 8.3.1 receive the Services under this Contract; and
  - 8.3.2 make use of the Services provided by a Replacement Supplier; and
  - 8.3.3 make use of the materials created under this Contract in other services related to, but not limited to, NPQs.
- 8.4 Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 8.5 Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, other than as set out in this clause 8 or as agreed in writing.
- 8.6 The Contractor shall indemnify the Customer 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 Customer'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 Customer of the Customer'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 Customer's Intellectual Property Rights to any third party.
- 8.9 The provisions of Schedule 14 (Contractor's Digital Platform) shall apply in relation to the Intellectual Property Rights in and licensing of Software.

## **9 WARRANTY AND INDEMNITY**

- 9.1 The Contractor warrants to the Customer that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel with using Good Industry Practice. The Customer 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 Customer 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 Customer; or
  - 9.2.2 if the Customer considers it would be impracticable or inappropriate to require the Contractor to take action in accordance with Clause 9.2.1, the Customer 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 continue
- 9.3 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
  - (b) fraud or fraudulent misrepresentation by it or its employees;
  - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - (d) any liability to the extent it cannot be limited or excluded by Law.
- 9.4 The Contractor's liability in respect of the indemnities in Clause 16 (VAT, Income Tax and National Insurance Contributions), Clause 7.11 (Employment Indemnity), Clause 8.6 (IPRs Indemnity), Schedule 13 (Staff Transfer) and the Annexes to Schedule 13 (Staff Transfer) shall be unlimited.
- 9.5 The Customer's liability in respect of the indemnities in Clause 7.11 (Employment Indemnity), Schedule 13 (Staff Transfer) and the Annexes to Schedule 13 (Staff Transfer) shall be unlimited.
- 9.6 Subject to Clauses 9.3 and 9.4 (Unlimited Liability) and Clauses 9.9 (Consequential Losses):
- (a) the Contractor's aggregate liability in respect of loss of or damage to the Customer Premises or other property or assets of the Customer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Customer'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 Customer 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 Customer under or in connection with this Contract as a result of Defaults by the Contractor shall in no event exceed:
    - i) in relation to Defaults occurring in the first Contract Year, an amount equal to 150% of the Estimated Year 1 Charges or £5 million whichever is the higher;
    - ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Charges paid and/or due to be paid to the Contractor under this Contract in the Contract Year immediately preceding the occurrence of the Default or £5 million, whichever is the higher; and
    - iii) in relation to Defaults occurring after the end of the Contract Period, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Contract Period or £5 million, whichever is the higher,

provided that where any Losses referred to this Clause 9.6(d) have been incurred by the Customer 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 willful repudiatory breach of this Contract, the references in such Clause to 150% shall be deemed to be references to 200% and references to £5 million shall be deemed to be references to £8 million.
- 9.7 Deductions from Charges shall not be taken into consideration when calculating the Contractor's liability under Clause 9.6(c).
- 9.8 Subject to Clauses 9.3 and 9.5 (Unlimited Liability) and Clause 9.9 (Consequential Losses) and without prejudice to the Customer's obligation to pay the Charges as and when they fall due for payment:
- (a) the Customer'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 Customer pursuant to Clause 10.1 shall in no event exceed the amount set out Schedule 12 (Breakage Costs); and
  - (b) the Customer'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 Customer 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 Customer may, amongst other things, recover from the Contractor the following Losses incurred by the Customer 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 Customer, including costs relating to time spent by or on behalf of the Customer 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 Customer; and
  - (e) any fine or penalty incurred by the Customer pursuant to Law and any costs incurred by the Customer in defending any proceedings which result in such fine or penalty.
- 9.11 Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 14 (Conduct of Claims) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.
- 9.12 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.
- 9.13 The Customer's total liability to the Contractor under this Contract shall be limited to paying the Charges in accordance with schedule 2 (Pricing) and complying with any other contract provision in the Call-Off Contract that requires a payment to be made by the Customer
- 9.14 All property of the Contractor whilst on the Customer's premises shall be there at the risk of the Contractor and the Customer shall accept no liability for any loss or damage howsoever occurring to it.
- 9.15 Without prejudice to its liability to indemnify the Customer under this Contract the Contractor shall take out and maintain in force or procure the taking out and maintenance of the Required Insurances and any other insurances as may be required by law. The Required Insurances shall be effective in each case no later than the date on which the relevant risk commences.
- 9.16 The Required Insurances referred to in clause 9.10 shall amount to:
- 9.16.1 at least five million pounds (£5 million) in respect of public liability cover in respect of each and every occurrence;
  - 9.16.2 at least five million pounds (£5 million) in respect of employer's liability cover in respect of each and every occurrence; and
  - 9.16.3 at least five million pounds (£5 million) in respect of professional indemnity cover in respect of each and every claim;
- 9.17 The Customer may review the minimum indemnity limits specified for the Required Insurances in clause 9.11 on an annual basis. Any Change that is required to the minimum indemnity limits as a result of the Customer's review shall be implemented in accordance with the Change Control Procedure.
- 9.18 The Contractor shall provide to the Customer 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 NOT USED**
- 10 TERMINATION**
- 10.1 This Contract may be terminated on notice by the Customer giving to the Contractor at least 90 days' notice in writing.
- 10.2 If the Customer terminates the Contract under clause 10.1 the Customer 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 Customer.

- 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 Customer 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 Customer 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 Customer in or pursuant to this Contract.
  - 10.5.10 any of the provisions of paragraph 4 of Schedule 4 (Financial Distress) have arisen.
- 10.6 Nothing in this clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

## **11 NOT USED**

## **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 Customer'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 Customer'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 Customer 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 Customer 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 Customer (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 Customer shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Customer, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause 12 is made aware of the Customer'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 Customer 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 Customer to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.

- 12.11 The Customer may consult with the Contractor to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 12.12 The Contractor shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

### **13 FREEDOM OF INFORMATION**

- 13.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer 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 Customer 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 Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five Working Days (or such other period as the Customer may specify) of the Customer's request; and
  - 13.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer 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 Customer 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 Customer.
- 13.5 The Contractor acknowledges that (notwithstanding the provisions of clause 13) the Customer 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 Customer 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 Customer 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 Customer's internal auditors or other duly authorised staff or Agents to inspect such documents as the Customer considers necessary in connection with this Contract and where appropriate speak to the Contractors employees.
- 14.2 The Contractor shall provide the Customer 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 Customer, promptly provide such assistance and comply with such timetable as the Customer may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Customer 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 Customer's request under Clause 15,1 the Contractor requires resources:

15.2.1 not normally accounted for in delivering the Services; or

15.2.2 no accounted for in the Charges; or

15.2.3 after the Expiry Date;

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

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

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

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

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

15.6.1 6 months preceding the Expiry Date (or within 20 Working Days after the Department or the Contractor has given notice to terminate the Contract), the Contractor shall disclose to the Department and shall permit the Department to disclose to any tenderer for services which are substantially the same as the Services, the Staffing Information of the Provisional Contractor Personnel List provided that prior to so doing any such tenderer shall have executed in writing a confidentiality undertaking in favour of the Contractor;

15.6.2 the Contractor keeps the Staffing Information in the Provisional Contractor Personnel List updated at monthly intervals, to the Department and to the Replacement Supplier information in respect of each employee whom the Contractor reasonably believes will be a Transferring Contractor Employee provided that prior to so doing the Replacement Supplier nominated by the Department shall have executed in writing a confidentiality undertaking in favour of the Contractor;

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

15.7 Within a period of 21 days following the expiry or termination of this Contract the Contractor shall provide to the Department or the Successor Contractor in writing the Staffing Information in relation to Transferring Contractor Employees in accordance with Schedule 13 (Staff Transfer).

15.8 In the event that the Customer 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 Customer or Successor Contractor and included within the indemnity provided by the Contractor.

15.9 The Customer 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 Customer or Successor Contractor in connection with the costs and liabilities indemnified by the Contractor.

15.10 This clause 15 shall continue in effect for six months following the expiry or termination of this Contract.

## **EXIT PLAN AND HANDOVER**

- 15.11 Further to the requirements of this clause 15 and in accordance with Schedule 1 Part 1 (The Services) the Contractor shall, within three (3) months of the date of this contract prepare and submit to the Customer and shall thereafter maintain, an Exit Plan.
- 15.12 The Exit Plan shall set out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the Customer and/or its Replacement Contractor at the end of the Contract Period or on the earlier termination of any part of the Contract or cessation of the provision of any part of the Services by the Contractor.
- 15.13 Within thirty (30) days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 24.
- 15.14 The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update, the Contractor will submit the revised Exit Plan to the Customer for review. Within 30 days following submission of the revised Exit Plan, the Parties shall use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within 30 days, such dispute shall be referred to the dispute resolution procedure in clause 24.
- 15.15 The Contractor shall implement its Exit Plan not less than nine (9) months prior to whichever occurs first out of the Termination Date or the Expiry Date.
- 15.16 The Contractor shall co-operate fully with the Customer during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 15.17 Within ten (10) Business Days of being requested by the Customer, the Contractor shall transfer to the Customer, or any person designated by the Customer, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Customer.
- 15.18 The Contractor shall co-operate fully with the Customer in order to enable an efficient and detailed knowledge transfer from the Contractor to the Customer or any other Replacement Contractor at the end of the Contract Period or on the earlier termination of any part of the Contract or cessation of the provision of any part of the Services by the Contractor and shall provide the Customer free of charge with full access to Contractor Staff, copies of all documents, reports, summaries and any other information requested by the Customer. The Contractor shall comply with the Customer's request for information no later than fifteen (15) Business Days from the date that that request was made.

## **16 TAX INDEMNITY**

- 16.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration. Where the Customer has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Customer 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 Customer has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Customer 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 Customer 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 Customer 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 Customer 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 Customer 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 Customer for the purposes of tax and/or national insurance contributions; then the Customer 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 Customer against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant Customer 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 Customer in connection with any such assessment or claim.
- 16.10 The Contractor authorises the Customer 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 Customer 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 Customer 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 Customer 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 Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 17.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- 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 Customer 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 Customer 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:
    - the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 6);
    - 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 Customer 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 Customer has been obtained and the following conditions are fulfilled:
    - (a) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
    - (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 Customer in meeting its obligations); and

- (d) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

- 17.4.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.
- 17.4.6 ensure it notifies, and seeks the permission of, any party whose Personal Data is being processed that the Customer may share their data with other Government departments and other organisations for the purposes set out in Schedule 6
- 17.5 Subject to clause 17.6, the Contractor shall notify the Customer 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 Customer 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 Customer in phases, as details become available.
- 17.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
  - 17.7.1 the Customer with full details and copies of the complaint, communication or request;
  - 17.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 17.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 17.7.4 assistance as requested by the Customer following any Data Loss Event;
  - 17.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer 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 Customer determines that the processing is not occasional;
  - 17.8.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 17.8.3 the Customer 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 Customer or the Customer'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 Customer in writing of the intended sub-processor and processing;
  - 17.11.2 obtain the written consent of the Customer;
  - 17.11.3 provide the Customer with such information regarding the sub-processor as the Customer 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 Customer against any liability, assessment or claim made by the Information Commissioner's Office or any other relevant Customer 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 Customer 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 Customer 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 Customer may have in place from time to time.
- 18.2 In considering any amendment or variation to this Contract, the parties shall use the Change Control Procedure as set out in Schedule 5 (Change Control Procedure).

## **19 ASSIGNMENT AND SUB-CONTRACTING**

- 19.1 The benefit and burden of this Contract may not be assigned or Sub-Contracted in whole or in part by the Contractor without the prior written consent of the Customer save as expressly set out in clause 19.2. Such consent may be given subject to any conditions which the Customer considers necessary. The Customer 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 Customer's prior consent as set out in clause 19.1.
- 19.3 Where the Customer 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 Customer provide to the Customer 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 Customer has consented to an assignment pursuant to clause 19.1 the Contractor shall evidence the assignment in writing to the Customer 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 Customer's prior written consent.

- 19.6 The Customer may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the Customer's rights of termination pursuant to clause 10 unless the Sub-Contractor can remedy the breach to the Customer's satisfaction with 21 days of receipt by the Contractor of written notice from the Customer 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 Customer believes there are:
- 19.8.1 Compulsory grounds for excluding a Sub-Contractor pursuant to Regulation 57 of the Regulations; or
  - 19.8.2 Non-compulsory grounds for excluding a Sub-Contractor pursuant to Regulation 57 of the Regulations;
- the Customer may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such a requirement.
- 19.9 The Customer 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 is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person not a party to the Contract.

## **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 Customer 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 NOT USED**

## **28 PAYMENTS AND INVOICING**

- 28.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the Customer for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 28.2 In consideration for the provision of the Services the Customer shall pay the Charges in accordance with the Schedule 2 subject to the receipt of correct invoices pursuant to Clause 28.9 being issued by the Contractor.
- 28.3 The Contractor shall submit the first invoice no later than three weeks prior to the Cohort Commencement Date and subsequent invoices shall be submitted by the [insert date on award] of the month following the month in respect to which the invoice relates, unless otherwise stated in the Contract.
- 28.4 The Customer shall accept and process for payment an electronic invoice or paper copy invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this paragraph, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 28.5 Except where otherwise expressly stated in Schedule 2 the Contractor shall not be entitled to increase the Charges or any rates identified in Schedule 2 throughout the Contract Period.

- 28.6 The Charges are exclusive of Value Added Tax ("VAT") and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the Customer of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 28.7 Payment of the Charges by the Customer shall be without prejudice to any rights the Customer 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 Customer by reason of such payment.
- 28.8 The Customer may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 28.9 Invoices shall be submitted electronically by email to [insert where on award] or by post to [insert where on award] by the relevant date as specified in Clause 228.3.
- 28.10 An invoice is a Correctly Submitted Invoice if it is legible and includes:
- 28.10.1 the date of the invoice;
  - 28.10.2 Contractor's full name and address;
  - 28.10.3 Contract reference number;
  - 28.10.4 Purchase Order number (if applicable)
  - 28.10.5 the charging period;
  - 28.10.6 a detailed breakdown of the appropriate Charges including milestones achieved (if applicable)
  - 28.10.7 days and times worked (if applicable);
  - 28.10.8 Service Credits (if applicable); and
  - 28.10.9 VAT if applicable.
- 28.11 The Customer shall not pay an invoice which is not a Correctly Submitted Invoice.
- 28.12 The Customer intends to pay Correctly Submitted Invoice within 30 days of receipt, except in the circumstances set out in Schedule 2 Part 1 Pricing. Correctly Submitted Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This Clause 228.12 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.
- 28.13 The Customer shall not be responsible for any delay in payment caused by receipt of invoices which are not a Correctly Submitted Invoice and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Correctly Submitted Invoices together with an explanation of the need for correction.
- 28.14 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 Customer. The final invoice shall be submitted not later than 30 days after the end of the Contract Period.
- 28.15 The Customer shall not be obliged to pay the final invoice until the Contractor has carried out all of the Services.
- 28.16 If the Customer 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 Customer may withhold the disputed amount pending resolution of the dispute.

28.17 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: \_\_\_\_\_

Witness signature: \_\_\_\_\_

Position in Organisation: \_\_\_\_\_

Address in full: \_\_\_\_\_

Date: \_\_\_\_\_

**Authorised to sign for and on behalf of [The Customer]**

Signature: \_\_\_\_\_

Name in CAPITALS: \_\_\_\_\_

Witness signature: \_\_\_\_\_

Position in Organisation: \_\_\_\_\_

Address in full: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE 1: PART 1 – THE SERVICES**

[Insert Service Specification]



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

[Insert the Contractor’s Delivery Plan]

## **SCHEDULE 2: PART 1 – PRICING**

### **1 DEFINITIONS**

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

<b>“Charges”</b>	means the charges payable by the Customer for the performance of the Services by the Contractor.
<b>“Paragraph”</b>	means a paragraph of this Schedule 2: Part 1 unless expressly indicated to the contrary.
<b>“Price Per Teacher”</b>	means the price set per Teacher for each NPQ and NPQH Additional Support Offer.
<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.

### **2 GENERAL**

- 2.1 The Customer shall pay the Contractor the Charges as set out in Annex 2 for delivery of the Services, based on costs incurred as agreed in line with the submitted Pricing Schedule, subject to subject to satisfying the Customer’s payment conditions for the delivery of Services.
- 2.2 The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise in writing between the Contractor and the Customer, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
- 2.3 Indexation shall not apply to the Charges.
- 2.4 At any time during the Contract Period (including, for the avoidance of doubt, at any time before and/or after payment by the Customer to the Contractor) the Customer 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 Customer (including without limitation, procuring the consent of Teachers) to enable the Customer to validate any claim for payment made by the Contractor.
- 2.5 The Customer shall pay the Contractor the Charges for costs relating to the Services and satisfactorily meeting the KPIs, Service Levels and Performance Management, as set out in Part 2 of this Schedule 2 (Pricing and Performance Measures).

### **3 CHARGES TO TEACHERS**

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

### **4 RECOVERY OF SUMS DUE**

- 4.1 Whenever under the Contract any sum of money is recoverable from the Contractor, or payable by the Contractor (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Contract), the Customer may set off the sum from any sum due, or which at any later time may become any other agreement or contract with the Customer or the Crown.
- 4.2 Any overpayment by either Party, whether of the Charges or of VAT or otherwise shall be the sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 4.3 The Contractor shall make any payments due to the Customer 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 Customer to the Contractor.
- 4.4 All payments due shall be made within a 28 days once agreed between the parties that a sum of money is recoverable, unless otherwise specified in the Contract, in cleared funds, to such bank or building society as the recipient Party may from time to time direct.

## **5 DISPUTED CLAIMS**

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

## **6 ADJUSTMENT OF THE CHARGES**

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

## ANNEX 1 TO SCHEDULE 2: PART 1 – PAYMENT PROCESS

*Drafting note: The Customer has two methods of payment. Only one will be specified in the Call Off Order:*

### 1 GENERAL

- 1.1 The Contractor shall provide the Services in accordance with one of Payment Methods set out below which shall be specified in the Call Off Order.

### 2 PAYMENT METHOD 1

- 2.1 The Charges payable to the Contractor by the Customer shall consist of the total sum of each Price Per Teacher multiplied by the number of Teachers undertaking the respective NPQ or NPQH Additional Support Offer subject to and in accordance with the provisions of this Contract. The Charges will be paid in full and prior to Service Commencement in accordance with paragraphs 2.3 and 2.4.

#### Price Per Teacher

- 2.2 The Contractor shall provide the Services in accordance with the Price per Teacher list in Table 1 below:

Table 1 - Price Per Teacher	
Qualification/Support Offer	Price Per Teacher
NPQ Leading Teacher Development (NPQLTD)	To be inserted at Call Off Award
NPQ for Leading Teaching (NPQLT)	To be inserted at Call Off Award
NPQ for Leading Behaviour and Culture (NPQLBC)	To be inserted at Call Off Award
NPQ for Senior Leadership (NPQSL)	To be inserted at Call Off Award
NPQ for Headship (NPQH)	To be inserted at Call Off Award
NPQ for Executive Leadership (NPQEL)	To be inserted at Call Off Award
NPQH Additional Support Offer	To be inserted at Call Off Award

- 2.3 The Contractor invoices the total Charges payable, as set out in Annex 2 of this Schedule, at least 3 weeks prior to the Cohort Commencement Date. The Customer pays the Contractor no later than 1 week prior to the Cohort Commencement Date.
- 2.4 If the Customer does not pay the Contractor at least 1 week prior to the Cohort Commencement Date, the Teacher(s) will not be able to commence their qualification(s) or NPQH Additional Support Offer, unless otherwise agreed by the Contractor.
- 2.5 If a Teacher withdraws from their qualification or NPQH Additional Support Offer, the Customer will not be able to claim back any of the Price Per Teacher paid. If a Teacher defers completing their qualification or NPQH Additional Support Offer due to:
- 2.5.1 going on maternity leave; or
  - 2.5.2 taking an extended period of absence such as for a sabbatical; or
  - 2.5.3 a change in their contracted employment hours with the Customer; or
  - 2.5.4 illness

the Contractor allows the Teacher to complete their qualification or NPQH Additional Support Offer where reasonably practicable and does not levy any additional charges on the Customer or

Teacher(s) concerned. In the event the Contractor cannot accommodate the Teacher completing their qualification or NPQH Additional Support Offer, the Contractor must make reasonable endeavours (and assist the Customer) before the contract has ended to ensure the Teacher transferred to another Framework Contractor who will be in a position to allow the Teacher complete their training.

### 3 PAYMENT METHOD 2

- 3.1 The Charges payable to the Contractor by the Customer shall consist of the total sum of each Price Per Teacher or price per NPQH Additional Support Offer multiplied by the number of Teachers undertaking the respective NPQ or NPQH Additional Support Offer, subject to and in accordance with the provisions of this Contract.
- 3.2 The School will pay in milestone payments in the following way:
- 3.2.1 40% of the Price Per Teacher will be paid at least 1 week prior to the Service Commencement date for the Teacher; and
- 3.2.2 The remaining 60% of the Price Per Teacher will be paid in milestone payments as specified for each individual qualification and NPQH Additional Support Offer in Tables 2, 3 and 4.

#### Price Per Teacher

- 3.3 The Contractor shall provide the Services in accordance with the Price per Teacher list in Table 1 below:

Table 1 - Price Per Teacher	
Qualification/Support Offer	Price Per Teacher
NPQ Leading Teacher Development (NPQLTD)	£ [Cannot exceed £902 (ex VAT)]
NPQ for Leading Teaching (NPQLT)	£ [Cannot exceed £902 (ex VAT)]
NPQ for Leading Behaviour and Culture (NPQLBC)	£ [Cannot exceed £902 (ex VAT)]
NPQ for Senior Leadership (NPQSL)	£ [Cannot exceed £1149 (ex VAT)]
NPQ for Headship (NPQH)	£ [Cannot exceed £1985 (ex VAT)]
NPQ for Executive Leadership (NPQEL)	£ [Cannot exceed £4099 (ex VAT)]
NPQH Additional Support Offer	£ [Cannot exceed £800 (ex VAT)]

#### 40% of the Price Per Teacher

- 3.4 The Contractor must invoice 40% of the price payable for each Teacher, at least 3 weeks prior to the Cohort Commencement Date of each Teacher. The Customer pays the Contractor no later than 1 week prior to the Cohort Commencement Date of each Teacher. The 40% of the price payable for each Teacher prior to the Cohort Commencement Date is non-refundable and cannot be recovered by the Customer if a Teacher withdraws from their qualification or NPQH Additional Support Offer.
- 3.5 If the Customer does not pay the Contractor 40% of the Price Per Teacher least 1 week prior to the Cohort Commencement Date, the Teacher will not be able to start their respective qualification or NPQH Additional Support Offer, unless otherwise agreed by the Contractor.
- 3.6 If the Call Off Order covers multiple Cohorts and a Teacher withdraws prior to their Cohort Commencement Date and payment has already been made, the Contractor is permitted to replace them with another Teacher who can start their qualification or NPQH Additional Support Offer at

the next Cohort Commencement Date covered by the Call Off Order.

#### **60% of the Price Per Teacher**

- 3.7 The remaining 60% of the Price Per Teacher will be paid in milestone payments, subject to the terms of the Contract. The Customer shall pay the Contractor the applicable milestone payment for each milestone review point that is reached in accordance with the requirements of the Contract. The applicable milestone payment shall be ascertained by reference to Table 2, Table 3 and Table 4 below.
- 3.8 In order to trigger payment for Milestone 1, and where they apply, Milestone 2 and Milestone 3, the Teacher must be enrolled on the qualification or support offer until the milestone review point specified in Table 2 for Specialist NPQs, Table 3 for Leadership NPQs and Table 4 NPQH Additional Support Offer.

#### **Deferrals and withdrawals**

- 3.9 If a Teacher withdraws from their NPQ or NPQH Additional Support Offer in between two milestone review points or before the first milestone review point, a milestone payment will be paid for the full period between the two milestone review points or between the period the 40% of the Price Per Teacher was paid and the first milestone review point. No further milestone payments will be made past that point as the Contractor is no longer delivering to that Teacher. For demonstration purposes, if the Teacher dropped off between Milestone 1 and Milestone 2, a payment would be made for Milestone 2, but no more payments will be made past Milestone 2. For the avoidance of doubt, the same will apply to any 2 consecutive milestone review points.
- 3.10 If a Teacher defers completing their qualification or NPQH Additional Support Offer due to:
- 3.10.1 going on maternity leave; or
  - 3.10.2 taking an extended period of absence such as for a sabbatical; or
  - 3.10.3 a change in their contracted employment hours with the Customer; or
  - 3.10.4 illness
- between retention points, a milestone payment will be paid if the deferral has occurred within one calendar month of the next milestone point.
- 3.11 If a Teacher defers more than one calendar month before the next milestone review point, a milestone payment will not be paid.
- 3.12 If a Teacher wishes to recommence their programme and can complete their qualification or NPQH Additional Support Offer before the call off contract expiry date, agreement must be reached between the Parties on a future payment Schedule via Variation. In all other cases, where a Teacher wishes to recommence their qualification or support offer the Contractor will need to agree a revised Schedule for remaining milestone payments with the School, under a separate Call Off Contract. In the event the Contractor cannot accommodate the Teacher completing their qualification or NPQH Additional Support Offer, the Contractor must make reasonable endeavours (and assist the Customer) before the contract has ended to ensure the Teacher is transferred to another Framework Contractor who will be in a position to allow the Teacher to complete their qualification or support offer.

#### **Milestone Payments**

- 3.13 Payment will be made based upon the Teacher reaching each milestone review point as set out in Tables 2, 3 and 4 during the contract.

**Table 2 – Milestone Payments for Leading Teaching NPQ, Teaching Development NPQ and Behaviour and Culture NPQ**

	Cohort 1		Cohort 2	
	Milestone Review Point –	Milestone Payment	Milestone Review Point – Payment Made	Milestone Payment

	Payment Made			
<b>Milestone Payment 1</b>	25 March 20xx	30% of Price Per Teacher [£ to be inserted at call-off award]	25 September 20xx	30% of Price Per Teacher [£ to be inserted at call-off award]
<b>Milestone Payment 2</b>	25 August 20xx	30% of Price Per Teacher [£ to be inserted at call-off award]	25 February 20xx	30% of Price Per Teacher [£ to be inserted at call-off award]

**Table 3 – Milestone Payments for NPQ Senior Leader, NPQ Headteacher and NPQ Executive Leader**

	Cohort 1		Cohort 2	
	Milestone Review Point – Payment Made	Milestone Payment	Milestone Review Point – Payment Made	Milestone Payment
<b>Milestone Payment 1</b>	25 February 20xx	20% of Price Per Teacher [£ to be inserted at call-off award]	25 July 20xx	20% of Price Per Teacher [£ to be inserted at call-off award]
<b>Milestone Payment 2</b>	25 August 20xx	20% of Price Per Teacher [£ to be inserted at call-off award]	25 January 20xx	20% of Price Per Teacher [£ to be inserted at call-off award]
<b>Milestone Payment 3</b>	25 March 20xx	20% of Price Per Teacher [£ to be inserted at call-off award]	25 August 20xx	20% of Price Per Teacher [£ to be inserted at call-off award]

**Table 4 Milestone Payments and Payment Schedule for NPQH Additional Support Offer**

Output	Milestone review point – Payment Made	Milestone Payment
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<b>Milestone Payment 1</b>	One third of delivery complete	20% of Price Per Teacher [£ to be inserted at call-off award]
<b>Milestone Payment 2</b>	Two thirds of delivery complete	20% of Price Per Teacher [£ to be inserted at call-off award]
<b>Milestone Payment 3</b>	Support offer completed	20% of Price Per Teacher [£ to be inserted at call-off award]

#### 4 PRICING OF VARIATIONS

- 4.1 The provisions of this paragraph 4 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).
- 4.2 The Parties acknowledge that a Variation or proposed Variation may have an impact on the Charges in the following way:
- 4.2.1 One-off cost, in which case paragraph 4.4 shall apply;
- 4.3 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 Customer's approval a Pricing Schedule demonstrating the impact of the proposed Variation which shall:
- 4.3.1 Include full disclosure of any assumptions underlying such a quotation. The School reserves the right to request further clarity around these assumptions and the underlying calculations until it is satisfied as to their validity.
- 4.4 Where paragraph 4.2.1 applies:
- 4.4.1 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).
- 4.4.2 The Customer shall issue a separate purchase order and the Contractor shall raise a separate invoice or credit note in respect of the one-off cost.
- 4.5 Following implementation of a Variation, the School shall make any necessary consequential changes and/or updates to the relevant tables of this Schedule 2: Part 1 or add any new additional tables to 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:

Qualification	Price per Teacher	Number of Teachers included in Call Off Order	Total Price
NPQ for Leading Teaching	£ [to be inserted at Call Off award]	x	£x
NPQ for Leading Behaviour and Culture	£ [to be inserted at Call Off award]	x	£x
NPQ for Leading Teacher Development	£ [to be inserted at Call Off award]	x	£x
NPQ for Senior Leadership	£ [to be inserted at Call Off award]	x	£x
NPQ for Headship	£ [to be inserted at Call Off award]	x	£x
NPQ for Executive Leadership	£ [to be inserted at Call Off award]	x	£x
NPQH Additional Support Offer	£ [to be inserted at Call Off award]	x	£x
Total Call Off Contract Value	N/A	N/A	£x

## SCHEDULE 2: PART 2 – PERFORMANCE

In this section the words below have the following meaning:

<b>“Improvement Plan”</b>	means a plan for improvement that the Customer 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 Annex A of this Schedule.
<b>“Performance Management”</b>	means how the Customer 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>“Reporting Period”</b>	means the reporting period that occurs every calendar month from 25th of each month to the 24th of the following month and will commence on the Contract Commencement Date.
<b>“Service Credits”</b>	means the service credits as set out in table 3 of 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 Customer;
  - 1.2.2 provide a mechanism whereby the Customer 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 Customer 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 [insert period of reporting] the data outlining performance against the Service Levels to date and confirm whether they have been achieved.
- 1.6 If the Contractor fails to meet any one Service Level in any Reporting Period, the Customer reserves the right to take action in line with paragraphs 2.10 to 2.14 (Consequence of Service Failure).

1.7 Service Levels are set out in Table 1 below:

Table 1 Service Levels			
Subject	Ref	Service Level	Level to be achieved
Performance/management Meetings	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]
Administration / Communication	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]
Management Information	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]
Finance	F1	Ensure that valid invoices are submitted to the Customer by the [insert date] of the month for the relevant Reporting Period.	100% of invoices to be submitted by [insert date] for the relevant reporting period
	F2	Ensure that all financial discrepancies identified by the Customer are 100% accurately reconciled ahead of the next invoice period and any variances to invoicing values offset.	100% of financial discrepancies accurately reconciled and invoicing values offset by the next reporting period deadline following identification or notification of the discrepancy

## KPIs

- 1.8 The Parties shall monitor the Contractor's performance against each of the KPIs listed in Annex A of this Schedule (KPIs) at the agreed intervals.
- 1.9 If at the agreed reporting milestone, the Contractor:
- 1.9.1 achieves a KPI, performance measures will be achieved, and no further action will be required;
  - 1.9.2 does not achieve a KPI, it will be declared a 'Service Failure' and the Customer reserves the right to take action in line with paragraphs 2.10 to 2.14 (Consequence of Service Failure) Paragraph of this Schedule.
- 1.10 In line with the cross-government transparency agenda the Customer reserves the right to make the Contractors performance against the KPIs in Annex A 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 Customer 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 [insert time period] and during performance review meetings. The Contractor shall cooperate with the Customer in this regard and provide any information and evidence reasonably required by the Customer 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 Customer to ensure that the Services are delivered as specified in the Contract and that Service Levels, Minimum Targets and KPIs are achieved.

- 2.3 Performance reviews shall be documented. The Contractor shall provide any information and data requested by the Customer to facilitate the reviews and arrange, where necessary, access to any of Contractor Premises or delivery locations, including those operated by Sub-Contractors.
- 2.4 The Customer may instruct the Contractor to take appropriate remedial action where the Customer reasonably considers that the Implementation Plan and/or a Performance Improvement Plan is not being complied with, and the Contractor shall take such remedial action.
- 2.5 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.
- 2.6 The Contractor shall ensure that all systems and processes used for the monitoring and recording of performance are robust.

### **Contractor Management Information (MI) Requirements**

- 2.7 The Contractor shall supply Management Information and Data relevant to the delivery of the Services to the Customer, using formats and to timescales as detailed in the Specification or as are otherwise notified to the Contractor by the Customer.
- 2.8 In addition to the provision of Management Information, the Contractor responds to and provides additional information (at no additional charge) relating to the provision of the Services as required by the Customer from time to time.
- 2.9 The Customer 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**

- 2.10 Where the Service Failure is as result the Contractor failing to meet any one Service Level by the dates set out in Table 1 of Schedule 2 Part 2 for two consecutive Reporting Periods, and the Contractor has not addressed and resolved the Service Level failure within the time agreed between the Contractor and the Customer, the Customer will apply a Service Credit.
- 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 Customer shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:
  - 2.11.1 The Customer shall be entitled to require the Contractor, and the Contractor agrees to prepare and provide to the Customer, a plan for improvement (an "Improvement Plan") within ten (10) Working Days of a written request by the Customer for such Improvement Plan. Such Improvement Plan shall be subject to the Customer's prior approval and the Contractor will be required to implement any approved Improvement Plan, as soon as reasonably practicable;
  - 2.11.2 The Customer 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 Customer in order to resolve the issues raised by the Customer in its notice to the Contractor requesting such meetings;
  - 2.11.3 The Customer 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 Customer 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 Customer has, in its absolute and sole discretion, invoked one or more of the remedies set in paragraph 2.11 and 2.12 above the Customer may suspend the Contractor from the Framework Agreement pending the Customer 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 Customer; and/or

2.12.3 met the interim performance measures and/or milestones.

2.13 Whether or not the Customer has exercised its rights under pursuant to paragraph 2.13 in the event that the Customer has, in its absolute and sole discretions invoked one or more of the remedies set out in paragraph 2.12 above 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 Customer; 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 Customer 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 Customer may at its absolute discretion terminate the Framework Agreement as per paragraph 7.4 of the Framework Agreement.

### 3 SERVICE CREDITS

3.1 Accrual of Service Credits shall entitle the Customer to a reduction in the Charges.

3.2 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 5% of the Total Contract Value.

3.3 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.

3.4 The financial consequences that will be applied in the event of a Service Credit are broken down in Table 3 below.

#### 3.5 Table 3: Service Credits

Service Credits accrued:	Financial consequence equivalent to:
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 Service Credits	4% of Call Off Contract Value
5 or more Service Credits	5% of Call Off Contract Value

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

- I. The KPIs in Table A set out the measures the Customer will use to monitor the Contractor's performance. The KPIs will be applied to each Call Off Contract, with the Cohort specific targets and milestones included in the Call Off Contract in Part 2 of Schedule 2.
- II. The Customer and Schools reserve the right to tailor, amend or add additional KPIs to those stated in Table A for Call Off Contracts to ensure they reflect the needs and requirements of the specific Cohort.

Table A – Key Performance Indicators				
Ref	Type	Measure	Monitoring Method	Target and Milestone
1	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]
2	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]
3	Retention	Number of Teachers who commence NPQ during the Call Off Contract, remain engaged until to end of the programme.	Monthly monitoring during the Call Off Contract.	[insert at Call Off Stage]
4	Satisfaction	The numbers of Teachers who commence an NPQ during the Call Off Contract that rate their training as good or above at the end of the programme.	Satisfaction will be measured through a survey completed by Teachers at the end of each year of the programme.	A minimum of 80% of the Teachers who commence NPQ the Call Off Contract who rate the training good or above at the end of the programme.

## SCHEDULE 3: ADDITIONAL CLAUSES

### 1. Customer Security Standards

“BPSS”

“Baseline Personnel Security Standard”

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

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

“CCSC”

“Certified Cyber Security Consultancy”

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

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

“CCP”

“Certified Professional”

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

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

“CC”

“Common Criteria”

the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.

“CPA”

“Commercial Product Assurance”

[formerly called “CESG Product Assurance”]

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

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

“Cyber Essentials”

“Cyber Essentials Plus”

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

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

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

"Data"	shall have the meanings given to those terms by the GDPR
"Data Controller"	
"Data Processor"	
"Personal Data"	
"Sensitive Personal Data"	
"Data Subject", "Process" and "Processing"	
"Customer's Data"	is any data or information owned or retained in order to meet Customer business objectives and tasks, including:
"Customer'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 Customer; 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 Customer is the Data Controller;</li> </ul>
"Customer"	means the Customer for Education
"Customer"	
"Customer Security Standards"	means the Customer'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”	
“Industry Good Standard”	means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
“GSC”	
“GSCP”	means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a>
“HMG”	means Her Majesty’s Government
“ICT”	means Information and Communications Technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
“ISO/IEC 27001” “ISO 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	is the International Standard describing for Business Continuity
“IT Security Health Check (ITSHC)”	
“IT Health Check (ITHC)”	means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.
“Penetration Testing”	
“Need-to-Know”	the Need-to-Know principle is employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.
“NCSC”	The National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Customer 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 Customer Security Standards for Contractors, which include but are not constrained to the following clauses;
- 1.2. As the Contractor will be handling information at OFFICIAL on behalf of the Customer, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - Action Note 09/14 25 May 2016, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Customer.
- 1.3. The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4. The Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Customer.

The scope of certification and the statement of applicability must be acceptable, following review, to the Customer, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).

- 1.5. The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Customer 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 Customer Data).
- 1.6. The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Customer Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 1.7. Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Customer prior to being used for the transfer of any Customer Data.
- 1.8. Storage of Customer Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to clause 1.9 and 1.10 below.
- 1.9. Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Customer 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 Customer.
- 1.10. All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Customer 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 Customer.
- 1.11. Whilst in the Contractor's care all removable media and hardcopy paper documents containing Customer Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- 1.12. When necessary to hand carry removable media and/or hardcopy paper documents containing Customer Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 1.13. At the end of the contract or in the event of equipment failure or obsolescence, all Customer 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 Customer's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- 1.14. Access by Contractor or Sub-Contractor staff to Customer 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

Customer. All Contractor or Sub-Contractor staff must complete this process before access to Customer Data is permitted.

- 1.15. All Contractor or Sub-Contractor employees who handle Customer Data must have annual awareness training in protecting information.
- 1.16. The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If an ISO 22301 certificate is not available the Contractor will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.17. Any suspected or actual breach of the confidentiality, integrity or availability of Customer Data being handled in the course of providing this service, or any non-compliance with these Customer Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Customer by a method agreed by both parties.
- 1.18. The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Customer 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 Customer and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 1.19. The Contractor or Sub-Contractors providing the service will provide the Customer with full details of any storage of Customer Data outside of the UK or any future intention to host Customer 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 Customer.
- 1.20. The Customer reserves the right to audit the Contractor or Sub-Contractors providing the Services within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any Sub-Contractors, compliance with the clauses contained in this Section.
- 1.21. The Contractor shall contractually enforce all these Customer Security Standards for Contractors onto any third-party Contractors, Sub-Contractors or partners who could potentially access Customer Data in the course of providing this service.
- 1.22. The Contractor and Sub-Contractors shall undergo appropriate security assurance activities as determined by the Customer. 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 Customer 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: NOT USED**

## **SCHEDULE 5 – CHANGE CONTROL PROCEDURE**

### **1 INTRODUCTION**

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

### **2 PRINCIPLES**

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

### **3 PROCEDURE**

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

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

- 3.4 Two (2) copies of each CCN shall be signed by the Contractor and submitted to the Customer 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 Customer shall sign both copies of the approved CCN within five (5) Working Days of receipt by the Customer. Following signature by the Customer, one (1) copy of the signed CCN shall be returned to the Consultant by the Customer.
- 3.6 A CCN signed by both parties shall constitute a valid variation or amendment to the Contract for the purposes of clause 18.2 of the Contract.
- 3.7 The Customer may at its absolute discretion reject any request for a Variation proposed by the Contractor.

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

### Contract Change Note for the Contract Change Procedure

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

WHEREAS the Contractor and the Customer entered into a Call Off Contract for the provision of National Professional Qualifications related 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 3.1 – 3.7 of this Call Off Contract.

**Signed for and on behalf of** [the Contractor]

**By** .....

**Name** .....

**Title** .....

**Date** .....



**Signed for and on behalf of the Customer**

**By** .....

**Name** .....

**Title** .....

**Date** .....

## SCHEDULE 6: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

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

<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Data will be retained for 6 years after the end of the term. At the end the data retention period, all Customer information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method.</p>
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## **SCHEDULE 7: IMPLEMENTATION PLAN**

<insert the Implementation Plan>

## **SCHEDULE 8 Quality Assurance**

*Drafting note – The Customer shall specify any specific Quality Assurance requirements here.*

### **1 DEFINITIONS**

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

“**Quality Assurance**” means how the Customer or its Agents will measure the Contractor’s performance in developing and delivering the training programme.

### **2 GENERAL**

- 2.1 The Contractor complies with the Quality Assurance requirements set out in the Specification and this Schedule.
- 2.2 The Contractor ensures they implement effective quality management arrangements to ensure the Services are provided in accordance with the Specification.

### **3 COMPLAINTS**

- 3.1 The Contractor shall implement, maintain and operate effective and clear procedures for receiving, investigating and responding to complaints
- 3.2 The Contractor shall provide the Customer with information about the number and nature of complaints it receives and the outcome of each complaint it processes and in accordance with 3.3.2 & 3.3.3 below.
- 3.3 In addition, the Contractor shall ensure;
- 3.3.1 complaints are investigated by individuals not involved in the subject matter of the complaint;
  - 3.3.2 report all complaints about the Services to Customer within three (3) working days from the date of the complaint;
  - 3.3.3 provide a meaningful response to all complaints by telephone or in person, as well as in writing, copying in the Customer, within five (5) Working Days from the date of the complaint.

## SCHEDULE 9: KEY PERSONNEL AND SUB-CONTRACTORS

### TO BE COMPLETED PRIOR TO CONTRACT SIGNATURE

#### 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 Contract Period	Role in delivery of the Services

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

### **TO BE COMPLETED PRIOR TO CONTRACT SIGNATURE**

- 1 The Customer acknowledges that the Contractor has requested that the following information be treated as Commercially Sensitive Information;  
<insert table of the information identified as commercially sensitive>
- 2 The Customer will consult with the Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.
- 3 The Customer 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 Customer 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 Customer 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>“Customer”</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 Customer; or (b) Non-Ministerial Customer.
<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 <b>[insert details]</b> 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 Customer 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 Customer for the Customer'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 Customer 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 Customer 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 Customer.
- 2.4 If the Customer rejects the draft Service Continuity Plan:
- (a) the Customer 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 Customer's comments) and shall re-submit a revised draft Service Continuity Plan to the Customer for the Customer's approval within 20 Working Days of the date of the Customer'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 Customer by a Related Service Provider;
  - (c) contain an obligation upon the Contractor to liaise with the Customer and (at the Customer'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 Customer and any of its other Related Service Providers in each case as notified to the Contractor by the Customer 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 Customer;
  - (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 Customer;
  - (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 Customer 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 Customer as notified by the Customer from time to time to inform decisions in support of the Customer’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 Customer, 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 Customer 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 Customer 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 Customer 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 Customer 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 Customer's written requirements. Prior to starting its review, the Contractor shall provide an accurate written estimate of the total costs payable by the Customer for the Customer's approval. The costs of both Parties of any such additional reviews shall be met by the Customer except that the Contractor shall not be entitled to charge the Customer for any costs that it may incur above any estimate without the Customer'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 Customer 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 Customer 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 Customer 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 Customer.
- 7.4 If the Customer rejects the Review Report and/or the Contractor's Proposals:
- (a) the Customer 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 Customer'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 Customer for the Customer's approval within 20 Working Days of the date of the Customer'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 Customer'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 Customer may require the Contractor to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Customer 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 Customer 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 Customer's requirements and the relevant provisions of the Service Continuity Plan. The Contractor's costs of the additional test shall be borne by the Customer 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 Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer 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 Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.

- 8.5 The Contractor shall, within 20 Working Days of the conclusion of each test, provide to the Customer 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 Customer, (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 Customer, by the date reasonably required by the Customer 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 Customer.

## **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 Customer 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 Customer.
- 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 Customer 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 Customer:<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 Customer;</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 Customer 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 Customer 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 Customer 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 Customer to the Contractor, requiring that the Contractor provide it with an accurate estimate of the Breakage Costs Payment that would be payable if the Customer 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 <b>Error! Reference source not found.</b> ;
<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 Contract Period has been extended, the expiry of the Extension Period;
  - (b) are unavoidable, proven, reasonable, and not capable of recovery;
  - (c) are incurred under arrangements or agreements that are directly associated with this Contract;
  - (d) are not Contract Breakage Costs relating to contracts or Sub-Contracts with Affiliates of the Contractor; and

- (e) relate directly to the termination of the Services.

#### **Limitation on Breakage Costs Payment**

- 2.2 The Breakage Costs Payment shall not exceed the relevant limit set out in Annex 1 (Maximum Breakage Costs);

#### **Redundancy Costs**

- 2.3 The Customer shall not be liable under this Schedule for any costs associated with Contractor Personnel whether relating to Redundancy Costs, redeployment or otherwise.

### **3 MITIGATION OF CONTRACT BREAKAGE COSTS AND UNRECOVERED COSTS**

- 3.1 The Contractor agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs by:
- (a) the appropriation of Assets, employees and resources for other purposes;
  - (b) at the Customer's request, assigning any Sub-Contracts to the Customer or a third party acting on behalf of the Customer; and
  - (c) in relation to Sub-Contracts that are not to be assigned to the Customer 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 Customer 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 Customer 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 Customer to the Contractor in accordance with the payment terms set out in Schedule 2 (Financials).

### **6 SET OFF**

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

#### **ANNEX 1: MAXIMUM BREAKAGE COSTS PAYMENT**

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

Termination Date	Maximum Breakage Costs Payment
Anytime in the first Contract Year	up to 100% of the Total Contract Value
Anytime in the second Contract Year	up to 50% of the Total Contract Value

## **SCHEDULE 13 – STAFF TRANSFER**

[INSERT IF APPLICABLE]

**SCHEDULE 14 – NOT USED**