

**THE SECRETARY OF STATE FOR EDUCATION
AND
(PROVIDER)**

**CONTRACT
DELIVERY OF SUBJECT KNOWLEDGE
ENHANCEMENT (SKE) TRAINING COURSES**

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THIS CONTRACT IS DATED 24th July 2021.

Contract: con 11755

PARTIES

- 1) The Secretary of State for Education whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT acting as part of the Crown (“the Department”)**
- 2) PROVIDER NAME & ADDRESS (“the Provider)**

A RECITALS

- (1) On 16 January 2021 the Department placed a contract notice on Find a Tender Service seeking invitations to tender from service providers to be appointed to a framework agreement for the supply of training services to improve the subject knowledge of trainee teachers offered a place on an initial teacher training programme and thereby improve retention on initial teacher training programmes and thereafter the provision of education in England’s schools.
- (2) The Provider was one of the bidders that was selected for appointment to the framework in accordance with the selection criteria set out in the procurement documents.
- (3) This call off contract (“the Contract”) sets out the terms and conditions that govern the provision of the subject knowledge enhancement training services.

1. INTERPRETATION

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

"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
“Approved Participant List”	means the list maintained by the Department of all those Participants whose engagement with a SKE Course has been approved by the Department;
“Bursary Payments”	means the bursary payments to eligible Participants in accordance with Schedule 2 (Pricing and Performance Measures);
“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: (a) Government Department;

	<p>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>(c) Non-Ministerial Department; or</p> <p>(d) Executive Agency;</p>
"Charge"	means the charge made by the Provider to the in accordance with the Schedule 2 (Pricing and Performance Measures);
"Commencement Date"	means the date of this Contract;
"Confidential Information"	means confidential information as defined in the Framework Agreement and in this Contract includes the Department's Confidential Information and/or the Provider's Confidential Information including for the Provider the information set out in Schedule 10 (Commercially Sensitive Information);
Consortium	means an association of 2 or more persons acting together to deliver the Services but excludes Sub-Contractors.
"Contracting Department"	any contracting Department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Department;
"Contract Period"	shall be the contract duration as set out in Clause 2.a;
"Control"	means a person that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and " Controls " and " Controlled " shall be interpreted accordingly;
"Controller", "Processor," "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer"	have the meaning given in the GDPR;
"Correctly Submitted Invoice"	means an invoice that is delivered in timing in accordance with the Contract; is for the correct sum; in respect of goods/services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, Provider name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated address.
"Crown Body"	any department, office or agency of the Crown;

"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Provider 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.
"the Department"	means the Department of Education and its agencies
"the Department's Contract Manager"	Means: <REDACTED>
"Department's Intellectual Property Rights"	means all Intellectual Property Rights comprised in or necessary for or arising from the performance of the Services
"DPA 2018"	Data Protection Act 2018
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Protection Legislation"	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Disclosure and Barring Services or DBS"	the Home Office sponsored safeguarding services that helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children.
"Employee Transfer Date"	means in respect of any particular Future Transferring Employee the date on which the part of the Services to which they are assigned transfers from the Supplier to any Successor Provider;
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
"Existing IPR"	any and all IPR that are owned by or licensed to either Party which are or have been developed

	independently of the Contract whether prior to the date of the Contract or otherwise;
“Exit Plan”	the plan prepared by the Provider in accordance with clause Error! Reference source not found. setting out the Provider’s methodology for achieving an orderly transition of the Services from the contractor to the Department or a Successor Provider on the expiry or termination of this Contract;
“Expiry Date”	means [the same date as the Expiry Date for the Framework Agreement];
“First SKE Academic Year”	means a 12 month period commencing on 1 October 2021 and ending on 30 September 2022;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
“Future Transfer Date”	means the date of termination or expiry of this Contract;
“Future Transferring Employees”	means those employees of the Provider 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 Provider;
“GDPR”	the General Data Protection Regulation (Regulation (EU) 2016/679)
“Her Majesty's Government”	means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant or officer of such Government
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
“Initial Staff Information”	means the information recorded on the template form set out in Part A of Schedule 8 (TUPE);
“ITT Programme”	means any initial teacher training programme approved by the Department;
“ITT Provider”	means the provider of an ITT Programme;
"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;
“Implementation Plan”	the plan developed and revised from time to time in accordance with Schedule 7 (Implementation Plan);
“LED”	Law Enforcement Directive (Directive (EU) 2016/680);
“New IPR”	IPR in items created by the Provider (or by a third party on behalf of the Provider) specifically for the purposes of a Call-Off Contract and updates and amendments of these items including (but not limited to) data base schemes which for the avoidance of doubt shall include but are not limited to Product 1 (the Sequence), Product 2 (Self-Directed Study Materials), Product 3 (Mentor Session Materials) and Product 4 (ECT Training Session Outlines) and for the avoidance of doubt shall not include Product 5a (ECT Training Programmes) or Product 6a (Mentor Training Programmes);
“Open Book Data”	has the meaning given to it in Schedule 11 (Financial Reports and Audit Rights)
“Ordered Services”	means all Services ordered by the Department from the Provider during the Term of this Call-Off Agreement,
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 2018;
“Participant”	means a person who has been offered a place on an ITT Programme conditional upon their completion of a SKE Course;
“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 such measures adopted by it;
“Recruitment Plan”	means the plan setting out the SKE Course subjects and anticipated Participant numbers for the forthcoming SKE Academic Year in the form set out in Document 4.;

“Regulatory Bodies”	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Department and " Regulatory Body " shall be construed accordingly;
“the Regulations”	means the Public Contract Regulations 2015;
“Relevant Legislation”	means any statute or regulations or the EC Treaty (or any directives or regulations made under them);
“Relevant Personnel Documentation”	means the information in relation to Future Transferring Employees as prescribed in Part C of Schedule 8 (TUPE);
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
“Required Insurances”	means the insurances as set out in Clause 9.7;
“Serious Breach”	means <ul style="list-style-type: none"> (a) any breach referred to as a Serious Breach in the Contract ; and/or (b) any breach or breaches which adversely, materially or substantially affect the performance or delivery of the Services in part or in full, or the provisions of a safe, healthy and supportive learning environment. Serious breach includes but is not limited to: <ul style="list-style-type: none"> (i) a breach of security that adversely affects the Personal Data or privacy of an individual; and (ii) failure to comply with Law, or acts or omissions by the Provider that endanger the health or safety of others;
“The Services”	the services required for development and provision of SKE Courses, to be performed by the Provider as described in Schedule 1 Part A (Specification);
“Service Eligibility Request Form”	means the service eligibility request form to be submitted by the Provider to the DfE as set out in the Ordering process (Schedule 4).
“SKE Academic Year”	means a 12 month period commencing on 1 October and ending on 30 September;

"SKE Course"	means a subject knowledge enhancement course as described in Schedule 1 Part A (Specification);
"SKE Programme"	means the Department's programme for subject knowledge enhancement;
"SKE Subject"	means a SKE Course which forms part of the SKE Programme in a given SKE Academic Year, as notified in advance by the Department to the Provider;
"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-Contractor"	the third party with whom the Provider 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 Provider related to this Contract;
"Successor Provider"	means the Provider that delivers services that are substantially the same as the Services after the expiry or termination of the Contract;
"The Provider's Contract Manager"	<REDACTED>
"Provider Personnel"	all employees, agents, consultants and contractors of the Provider and/or of any Sub-Contractor engaged by the Provider;
"Term"	means the period from the Commencement Date to the Expiry Date or such earlier termination date;
"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;
"Unit"	means a week of full-time delivery of SKE Course equivalent to 25 hours of learning time;
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

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

- c. 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

- a. The Contract shall commence on the Commencement Date and, subject to Clause 10.1 expire on the Expiry Date.
- b. The entering into by the Parties of the Contract is no guarantee of any Order for Services by the Department. Following the entering into of the Contract the Department is entitled but not obliged to Order Services in accordance with the Ordering Procedure (Schedule 12).
- c. This Contract governs the relationship of the Department with the Provider with respect to the provision of all Services Ordered by the Department under it.
- d. The Provider shall make the Services available on and subject to the terms of this Contract. When a Service is the subject of an Order by the Department, it is referred to in this Contract as an Ordered Service.

3. PROVIDER'S OBLIGATIONS

- a. The Provider shall promptly and efficiently deliver the Services in accordance with the provisions set out in Schedule 1 Part A (The Specification), and the special conditions set out in Schedule 3 (Additional Clauses) and in accordance with the Schedule 1 (Part B the Provider's Solutions). 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.
- b. The Provider shall comply with the accounting and performance measures set out in Schedule 2 (Pricing and Performance Measures).
- c. The Provider 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.
- d. In entering into this Contract the Provider is confirming that:
 - i. it has read and understood the Department's expectations of all services contractors as set out in the Government's Contractor Code of Conduct at <https://www.gov.uk/government/publications/Contractor-code-of-conduct> and the Provider will deliver the Services in accordance with the Contractor Code; and
 - ii. it will deliver the Services by reference to the Contractor Code as dated February 2019 and thereafter as updated from time to time.
- e. Not Used
- f. The Provider shall comply with the provisions of Part A of Schedule 11 (Financial Reports and Audit Rights) in relation to the maintenance of Open Book Data. [On or before the date of this Contract the Provider shall procure the execution of a Guarantee by the Guarantor in favour of the Department substantially in the form annexed at Schedule 9 (Parent Company Guarantee) to the Framework Agreement.]

4. DEPARTMENT'S OBLIGATIONS

- a. The Department will comply with the payment provisions of Schedule 2 (Pricing and Performance Measures, Part 1: Pricing) provided that the Department has received full and accurate information and documentation as required by Schedule 2 to be submitted by the Provider for work completed to the satisfaction of the Department.

5. CHANGES TO THE DEPARTMENT'S REQUIREMENTS

- a. The Department shall notify the Provider of any change to the Department's requirement under this Contract.
- b. The Provider shall use its best endeavours to accommodate any changes to the needs and requirements of the Department provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs to be agreed between the parties in writing.

6. MANAGEMENT

- a. The Provider shall promptly comply with all reasonable requests or directions of the Department's Contract Manager in respect of the Services.
- b. The Provider shall address any enquiries about procedural or contractual matters in writing to the Department's Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.
- c. The Provider's key-personnel and Sub-Contractors are set out in Schedule 9 (Key-Personnel and Sub-Contractors). The Provider shall notify the Department of any changes to its key-personnel or any proposed change of Sub-Contractors. In relation to any proposed change of sub-contractor the Provider shall comply with the provisions of clause 7.f - 7.h and clause 19.

7. PROVIDER'S EMPLOYEES AND SUB-CONTRACTORS

- a. The appointment by the Provider of sub-contractors shall be subject always to the requirements of clause 19. Where the Provider does enter into any sub-contract the provisions of clauses b to j shall apply.
- b. Where the Provider enters into a contract with one or more sub-contractors for the purpose of performing its obligations under the Contract (the "**Sub-Contractor**") it shall ensure prompt payment in accordance with this Clause 7.1. Unless otherwise agreed by the Department in writing, the Provider 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:
 - i. 10 days, where the Sub-Contractor is an SME; or
 - ii. 30 days either, where the Sub-Contractor is not an SME, or both the Contractor and the Sub-Contractor are SMEs,

7.2A The Provider shall comply with Clause b and shall provide, at the Department's request, sufficient evidence to demonstrate compliance.

- c. The Department shall be entitled to withhold payment due under Clause b for so long as the Provider, in the Department's reasonable opinion, has failed to comply

with its obligations to pay any Sub-Contractors promptly in accordance with Clause b For the avoidance of doubt the Department shall not be liable to pay any interest or penalty in withholding such payment.

- d. The Provider shall take all reasonable steps to satisfy itself that the Provider Personnel it engages are suitable in all respects to perform the Services.
- e. The Provider shall give to the Department if so requested a list of all persons who are or may be at any time directly concerned with the performance of this Contract specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the Department may reasonably require.
- f. If the Department notifies the Provider that it reasonably considers that a Sub-Contractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Contract, then the Provider shall, as soon as is reasonably practicable, take all such steps as the Department considers necessary to remedy the situation or, if so reasonably required by the Department, shall remove the said Sub-Contractor from providing the Services and shall provide a suitable replacement (at no cost to the Department).
- g. The Provider 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 Provider shall give immediate notice in writing to the Department's Contract Manager of proposals to change Sub-Contractors.
- h. The Provider shall immediately notify the Department if they have any concerns regarding the propriety of any of its Sub-Contractors in respect of work/services rendered in connection with this Contract.
- i. The Provider, its employees and Sub-Contractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
- j. The Provider shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Department's reasonable security requirements as required from time to time.

7A SAFEGUARDING

- 7A.1 The Provider shall make arrangements for ensuring that the Services are provided with a view to safeguarding and promoting the welfare of children receiving education or training. In doing so, the Provider 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 Provider 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 Provider 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 Provider 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 Provider 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 Provider and / or its Sub-Contractors of this Clause 7A shall constitute a Serious Breach of the Contract.

8. INTELLECTUAL PROPERTY RIGHTS

- a. Each Party keeps ownership of its own Existing IPRs. The Provider gives the Department a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Provider's Existing IPR to enable it to both:
 - i. receive and use the Services
 - ii. make use of the services provided by a Successor Provider.
- b. Any New IPR created under a Contract is owned by the Provider. The Provider gives the Department a licence to use any of its Existing IPRs and any New IPRs (a) for the purpose of fulfilling its obligations under the Contract during the Contract Period; (b) to receive and use the Services and (c) to make use of the services provided by a Successor Provider.
- c. Where a Party acquires ownership of IPRs 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.
- d. Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, other than as agreed in writing.
- e. Not used.
- f. The Provider shall indemnify the Department against all IPR Claims (including any claims relating to actual or alleged infringement of third-party Intellectual Property Rights), 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.
- g. To the extent permitted by law, the Provider hereby waives any Moral Rights as defined at Chapter IV of the Copyright, Designs and Patents Act 1988 in any copyright materials produced by or for the Provider in connection with the Services. Where it is not lawfully possible to waive Moral Rights, the Provider agrees not to assert any Moral Rights in respect of the Provider's materials. The Provider will use its reasonable endeavours to ensure that all Moral Rights in third party material used to perform the Services are waived. Where it is not lawfully possible to waive Moral Rights, the Provider will work with the owner or creator of the third-party materials to procure that Moral Rights are not asserted in respect of such third-party materials. If the Provider cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any third-party materials, the Provider will notify the Department and will obtain the Department's approval prior to

incorporating or using such third-party materials into (or to perform) the Ordered Services.

- h. The Provider warrants:
- i. that the Provider's Intellectual Property Rights comprise the original work of and were created by or on behalf of the Provider;
 - ii. that the Department's Intellectual Property Rights have not and will not be copied wholly or in part from any other work or material;
 - iii. that the use of or exercise by the Provider of the Existing IPR will not infringe the rights of any third party;
 - iv. that the Provider has not granted or assigned (and shall not grant or assign) any rights of any nature in the Department's Existing IPR to any third party (except by a sub-licence (if permitted by the Department) to its Sub-contractors if required in relation to performance of the Services).

9. WARRANTY AND INDEMNITY

- a. The Provider warrants to the Department that the obligations of the Provider under this Contract will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Department to expect in all the circumstances. The Department will be relying upon the Provider'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 Provider in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Provider as part of this Contract. The Provider warrants that any goods supplied by the Provider 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.
- b. Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Contract, then the Department shall be entitled, where appropriate to:
 - i. require the Provider promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or
 - ii. assess the cost of remedying the failure ("the assessed cost") and to deduct from any sums due to the Provider the Assessed Cost for the period that such failure continues.
- c. The Provider shall be liable for and shall indemnify the Department in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Department or otherwise arising out of or in the course of or caused by the provision of the Services.
- d. The Provider shall be liable for and shall indemnify the Department against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Contract or otherwise through the default of the Provider.
- e. All property of the Provider whilst on the Department's premises shall be there at the risk of the Provider and the Department shall accept no liability for any loss or damage howsoever occurring to it.

- f. Without prejudice to its liability to indemnify the Department under this Contract the Provider 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.
- g. The Required Insurances referred to in Clause 9.6 shall amount to:
 - i. at least two million pounds (£2,000,000 million) in respect of public liability cover in respect of each and every occurrence;
 - ii. at least five million pounds (£5,000,000) in respect of employer's liability cover in respect of each and every occurrence; and
 - iii. at least two million pounds (£2,000,000) in respect of professional indemnity cover in respect of each and every claim;
- h. The Department may review the minimum indemnity limits specified for the Required Insurances in Clause 9.7 on an annual basis. Any Change that is required to the minimum indemnity limits as a result of the Department's review shall be implemented in accordance with the Change Control Procedure.
- i. The Provider shall provide to the Department by 1 September annually during the Contract Period and at other times on request evidence confirming that the Required Insurances are and remain in place.

9A FINANCIAL DISTRESS

- 9A.1 As at the date of the Framework Agreement the Provider warranted to the Department its long-term credit ratings as set out in Schedule 4 (Financial Distress) Annex 3. The Provider shall comply with the requirements set out in paragraph 2 of Schedule 4 (Financial Distress) in relation to its credit ratings and in the event that a Financial Distress Event occurs the provisions of Schedule 4 (Financial Distress) shall apply.

9C FRAUD AND IRREGULARITY

- 9C.1 The Provider shall notify the Department immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Services including but not limited to cases of:
 - Collusion with employees of the Department;
 - Computer fraud;
 - The submission to the Department of inaccurate, incomplete, misleading or falsified information for the purpose of making a Charge or receiving Bursary Payments to the Department;
 - Fraud involving ITT Providers and/or sub-contractors and/or Participants;
 - Any non compliance with the requirements of the Call-Off Contract, Schedule 2 Part 1 (Price) in relation to the claiming, receipt of and administration of Bursary Payments,
- 9C.2 Provided nothing in this clause 9C shall require the Provider to do anything which may cause it to infringe any law.
- 9C.3 Where the Department has reasonable cause to believe that any fraud or irregularity has occurred in relation to the delivery of the Services and / or the payment of the Charges and /or the flow down of Bursary Payments by the Department the Department shall have the right of access to the Provider's premises at any reasonable

time with or without notice to examine and remove or copy all relevant documents and records including electronic records and to interview the Provider.

- 9C.4 The Department reserves the right to recover from the Provider any Charges and/or Bursary Payments paid where the payment of the Charges and/or Bursary Payments or any arrangement between the Provider and an ITT Provider breaches the terms of the Schedule 2 Part 2 (Price) of the Call-Off Contract and/or was based on wrong, inaccurate or misleading information.

10. TERMINATION

- a. 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.
- b. If the Department holds the view, acting reasonably, that the Provider 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 Provider to suspend delivery of the Services pending further investigations.
- c. This Contract may be terminated by the Department with immediate effect by notice in writing if at any time:-
 - i. the Provider commits a Serious Breach which cannot be remedied;
 - ii. in England and Wales, a petition is presented for the Provider's bankruptcy or a criminal bankruptcy order is made against the Provider 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;
 - iii. in Scotland, if the Provider becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) act 1985;
 - iv. where the Provider 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);
 - v. the Provider is convicted (or being a company, any officers or representatives of the Provider are convicted) of a criminal offence related to the business or professional conduct;
 - vi. the Provider commits (or being a company, any officers or representatives of the Provider commit) an act of grave misconduct in the course of the business;
 - vii. the Provider fails (or being a company, any officers or representatives of the Provider fail) to fulfil its obligations relating to the payment of Social Security contributions;
 - viii. the Provider fails (or being a company, any officers or representatives of the Provider fail) to fulfil its obligations relating to payment of taxes;
 - ix. the Provider fails (or being a company, any officers or representatives of the Provider fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Contract.

- x. any of the provisions of paragraph 4 of Schedule 4 (Financial Distress) have arisen.
 - xi. As a consequence of poor performance in accordance with the provisions of Schedule 2 Part 2 (Performance and KPIs);
 - xii. As a consequence of fraud or irregularity in accordance with clause 9C.
- d. Nothing in this Clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

11. STATUS OF PROVIDER

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

12. CONFIDENTIALITY

- a. Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
 - i. treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - ii. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- b. Clause 12 shall not apply to the extent that:
 - i. 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);
 - ii. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - iii. such information was obtained from a third party without obligation of confidentiality;
 - iv. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - v. it is independently developed without access to the other party's Confidential Information.
- c. The Provider may only disclose the Department's Confidential Information to the Provider Personnel who are directly involved in the provision of the Project and who need to know the information and shall ensure that such Provider Personnel are aware of and shall comply with these obligations as to confidentiality.
- d. The Provider shall not, and shall procure that the Provider Personnel do not, use any of the Department's Confidential Information received otherwise than for the purposes of this Contract.

- e. The Provider shall ensure that its employees, servants or such professional advisors or consultants are aware of the Provider's obligations under this Contract.
- f. Nothing in this Contract shall prevent the Department from disclosing the Provider's Confidential Information:
 - i. on a confidential basis to any Central Government Body for any proper purpose of the Department or of the relevant Central Government Body;
 - ii. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - iii. to the extent that the Department (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - iv. on a confidential basis to a professional adviser, consultant, Provider 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;
 - v. 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
 - vi. 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.
- g. The Department shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Department, employee, third party or Sub-Contractor to whom the Provider's Confidential Information is disclosed pursuant to Clause 12 is made aware of the Department's obligations of confidentiality.
- h. 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.
- i. The parties acknowledge that, except for any information that is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- j. Subject to Clause 12.9, the Provider hereby gives its consent for the Department to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- k. The Department may consult with the Provider to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.
- l. The Provider shall assist and cooperate with the Department to enable the Department to publish this Contract.

13. FREEDOM OF INFORMATION

- a. The Provider acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and

cooperate with the Department to enable the Department to comply with its information disclosure obligations.

- b. The Provider shall and shall procure that its Sub-Contractors shall:
 - i. transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - ii. provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five Working Days (or such other period as the Department may specify) of the Department's request; and
 - iii. provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- c. The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- d. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Department.
- e. The Provider acknowledges that (notwithstanding the provisions of Clause 13) the Department may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Project:
 - i. in certain circumstances without consulting the Provider; or
 - ii. following consultation with the Provider and having taken their views into account;provided always that where Clause 13.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- f. The Provider shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

14. ACCESS AND INFORMATION

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

15. TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION

- a. The Provider shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the

purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.

- b. Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Provider which relate to this Contract, including the documents and data, if any, referred to in this Call-off contract.
- c. The Provider undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility.
- d. The Department and the Provider shall act on the basis that TUPE applies on expiry or termination of the Contract where the Department is proposing to re-procure services which are substantially the same as the Services.
- e. During the period of 6 months preceding the expiry of the Contract or within 21 days after the Department or the Provider has given notice to terminate the Contract, the Provider shall disclose to the Department and shall permit the Department to disclose to any tenderer for services which are substantially the same as the Services, the Initial Staff Information provided that prior to so doing any such tenderer shall have executed in writing a confidentiality undertaking in favour of the Provider.
- f. During the period of three months preceding the expiry of this Contract or within 21 days after the Department or the Provider has given notice to terminate the Contract, the Provider shall, subject to the provisions of the Data Protection Laws, provide and thereafter keep updated at monthly intervals, to the Department and to the Successor Provider information equivalent to the Relevant Personnel Documentation and Prescribed Particulars in respect of each employee whom the Provider reasonably believes will be a Future Transferring Employee provided that prior to so doing the Successor Provider nominated by the Department shall have executed in writing a confidentiality undertaking in favour of the Provider.
- g. The Provider shall make reasonable endeavours to assist the Successor Provider to communicate with, meet and inform and consult with the employees whom the Provider reasonably believes will be a Future Transferring Employee and their trade union or other employee representatives for the purposes of complying with the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- h. The Provider shall immediately prior to the Future Transfer Date provide to the Department or the Successor Provider a complete and accurate list of the Prescribed Particulars of all employees whom it reasonably believes will be Future Transferring Employees.
- i. Within a period of 21 days following the expiry or termination of this Contract the Provider shall provide to the Department or the Successor Provider in writing Final Pay Details of the Future Transferring Employees.
- j. The Provider warrants that it shall supply complete and accurate information pursuant to Clauses 15.5, 15.6, 15.8 and 15.9 in all material respects and the Provider shall indemnify and keep the Department indemnified fully now and in the future in respect of all or any costs whether arising in contract or under any Relevant Legislation suffered or incurred by the Department or the Successor Provider nominated by the Department by reason of any proceeding, claim or demand arising from or in connection with the provision of information and/or the failure to provide complete and accurate information under Clauses 15.5, 15.6,

15.8 and 15.9 and/or the provision of assistance and/or failure to provide assistance under Clause 15.7 of this Contract

- k. After receiving notice of the termination of this Contract and for six (6) months preceding expiry of this Contract the Provider shall promptly notify the Department or the Successor Provider
 - i. Of the period of notice given by the Provider or received from any employee whom the Provider reasonably believes will be a Future Transferring Employee regardless of when such notice is to take effect;
 - ii. Of the termination, for whatever reason, of the employment of any employee whom the Provider reasonably believes will be a Future Transferring Employee; and
 - iii. Of any other change to any employee whom the Provider reasonably believes will be a Future Transferring Employee and their terms and conditions of employment, their Prescribed Particulars and their Relevant Personnel Documentation.
- l. The Provider warrants that it shall supply the Required Information completely and accurately in all respects at the time of supply and shall indemnify and keep the Department and/or any Successor Provider indemnified in respect of all and any costs suffered or incurred by the Department or the Successor Provider by reason of any proceedings, claim or demand arising out of or in connection with
 - i. Any claim against the Department or the Successor Provider by any Future Transferring Employee so far as it relates to any act or omission of the Provider after the Employee Transfer Date and prior to the Future Transfer Date; and
 - ii. Any claim against the Department or the Successor Provider by any Future Transferring Employee whose name is not included on the list provided by the Provider pursuant to Clause 15.8 so far as it relates to the dismissal of such Future Transferring Employee within two Months of the Department or Successor Provider becoming aware of the transfer of such Future Transferring Employee.
- m. In the event that the Department or the Successor Provider 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 Provider had been accurate and complete, then such (net) greater costs, liabilities or expenditure shall be deemed to be costs suffered or incurred by the Department or Successor Provider and included within the indemnity provided by the Provider.
- n. The Department or Successor Provider shall be entitled to recover from the Provider in full any legal, accountancy and other costs actually and reasonably incurred by the Department or Successor Provider in connection with the costs and liabilities indemnified by the Provider
- o. This Clause 15 shall continue in effect for six months following the expiry or termination of this Contract.
- p. Further to the requirements of this clause 15 and in accordance with Schedule 1 Part A (The Services) the Provider shall, within three months of the date of this contract prepare and submit to the Department and shall thereafter maintain, an Exit Plan.

16. TAX INDEMNITY

- a. Where the Provider is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration. Where the Department has deemed the Provider to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Department reserves the right to calculate Income Tax and pay it to HMRC. The amounts will be deducted from the Provider's fee for the work provided.
- b. Where the Provider is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration. Where the Department has deemed the Provider to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Department reserves the right to calculate primary (employee) National Insurance contributions (NICs) and pay them to HMRC. The amounts will be deducted from the Provider's fee for the work provided.
- c. The Department may, at any time during the term of this contract, ask the Provider to provide information which demonstrates how the Provider complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it.
- d. A request under Clause 16.3 above may specify the information which the Provider must provide and the period within which that information must be provided.
- e. The Department may terminate this Contract if
 1. in the case of a request mentioned in Clause 16.3 above if the Provider:
 - 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 Provider complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it;
 2. in the case of a request mentioned in Clause 16.4 above, the Provider fails to provide the specified information within the specified period, or
 3. it receives information which demonstrates that, at any time when Clauses 16.1 and 16.2 apply, the Provider is not complying with those Clauses.
- f. The Department may supply any information which it receives under Clause 16.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- g. The Provider warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract. The Provider 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.
- h. If, notwithstanding Clause 16.7 the HM Revenue and Customs and/or any other appropriate agency consider that the Provider is an employee of the Department for the purposes of tax and/or national insurance contributions; then the

Department shall be entitled to terminate this Contract immediately and deduct from the payments payable to the Provider 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 Provider as self-employed for all other purposes.

- i. Without prejudice to the provisions of Clause 16.8 above, the Provider shall indemnify the Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant Department arising out of the performance by the Provider of its obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by the Department in connection with any such assessment or claim.
- j. The Provider authorises the Department to provide the HM Revenue and Customs and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not the Department is obliged as a matter of law to comply with such request.
- k. The Provider shall register for value added tax if and when required by law and shall promptly notify the Department for Work and Pensions of its liability for Class 2 and, where appropriate, Class 4 national insurance contributions.

17. DATA PROTECTION

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

- a. nature of the data to be protected;
 - b. harm that might result from a Data Loss Event;
 - c. state of technological development; and
 - d. cost of implementing any measures;
- 3. ensure that:
 - a. the Provider Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 6);
 - b. it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Provider's duties under this Clause;
 - (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Department or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 4. not transfer Personal Data outside of the EU unless the prior written consent of the Department has been obtained and the following conditions are fulfilled:
 - a. the Department or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Department;
 - b. the Data Subject has enforceable rights and effective legal remedies;
 - c. the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Department in meeting its obligations); and
 - d. the Provider complies with any reasonable instructions notified to it in advance by the Department with respect to the processing of the Personal Data;
- 5. at the written direction of the Department, delete or return Personal Data (and any copies of it) to the Department on termination of the Contract unless the Provider is required by Law to retain the Personal Data.
- e. Subject to Clause 17.6, the Provider shall notify the Department immediately if it:
 - 1. receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 2. receives a request to rectify, block or erase any Personal Data;
 - 3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 4. receives any communication from the Information Commissioner or any other regulatory Department in connection with Personal Data processed under this Contract;

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
 6. becomes aware of a Data Loss Event.
- f. The Provider's obligation to notify under Clause 17.5 shall include the provision of further information to the Department in phases, as details become available.
 - g. Taking into account the nature of the processing, the Provider shall provide the Department with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 (and insofar as possible within the timescales reasonably required by the Department) including by promptly providing:
 1. the Department with full details and copies of the complaint, communication or request;
 2. such assistance as is reasonably requested by the Department to enable the Department to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 3. the Department, at its request, with any Personal Data it holds in relation to a Data Subject;
 4. assistance as requested by the Department following any Data Loss Event;
 5. assistance as requested by the Department with respect to any request from the Information Commissioner's Office, or any consultation by the Department with the Information Commissioner's Office.
 - h. The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
 1. the Department determines that the processing is not occasional;
 2. the Department determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 3. the Department determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
 - i. The Provider shall allow for audits of its Data Processing activity by the Department or the Department's designated auditor.
 - j. The Provider shall designate a data protection officer if required by the Data Protection Legislation.
 - k. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Provider must:
 1. notify the Department in writing of the intended Sub-processor and processing;
 2. obtain the written consent of the Department;
 3. provide the Department with such information regarding the Sub-processor as the Department may reasonably require.
 - l. The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
 - m. The Provider 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).

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

18. AMENDMENT AND VARIATION

- a. 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 Provider shall comply with any formal procedures for amending or varying contracts which the Department may have in place from time to time.
- b. In considering any amendment or variation to this Contract, the parties shall use the Change Control Procedure as set out in Schedule 3 (Change Control Procedure).

19. ASSIGNMENT AND SUB-CONTRACTING

- a. The benefit and burden of this Contract may not be assigned or sub-contracted in whole or in part by the Provider without the prior written consent of the Department save as expressly set out in clause b. Such consent may be given subject to any conditions which the Department considers necessary. The Department may withdraw its consent to any sub-contractor where it no longer has reasonable grounds to approve of the sub-contractor or the sub-contracting arrangement and where these grounds have been presented in writing to the Provider.
- b. The Provider may enter into sub-contracts for the delivery of the Services with a value per annum that does not exceed £10,000 (ten thousand pounds) without the requirement to seek the Department's prior consent as set out in clause a.
- c. Where the Department has consented to the appointment of a sub-contract, pursuant to clause a, the Provider shall, as soon as reasonably practicable following a request from the Department provide to the Department a copy of the sub-contract entered into between the Provider and the sub-contractor.
- d. Where the Department has consented to an assignment pursuant to clause a the Provider shall evidence the assignment in writing to the Department and provide a copy of the assignment document on request.
- e. The Provider shall not terminate or materially amend the terms of any Sub-contract whose value exceeds £10,000 (ten thousand pounds) without obtaining the Department's prior written consent.
- f. The Department may require the Provider to terminate a sub-contract if the acts or omissions of the Sub-contractor have given rise to the Department's rights of termination pursuant to clause 10 unless the sub-contractor can remedy the breach to the Department's satisfaction with 21 days of receipt by the Provider of written notice from the Department requiring the Sub-Contract to be terminated.
- g. The Provider shall remain responsible for all acts and omissions of its Sub-contractors as if they were its own.
- h. If the Department believes there are:
 - i. Compulsory grounds for excluding a sub-contractor pursuant to regulation 57 of the Regulations, the Provider shall replace or not appoint the sub-contractor;

- ii. Non-compulsory grounds for excluding a sub-contractor pursuant to regulation 57 of the regulations the Department may require the Provider to replace or not appoint the sub-contractor and the Provider shall comply with such a requirement.

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

- a. 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

- a. 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

- a. 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.
- b. 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.
- c. 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

- a. 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).
- b. The notice, demand or communication shall be deemed to have been duly served:
 - i. if delivered by hand, when left at the proper address for service;
 - ii. 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;

- iii. 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

- a. The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract. This shall include escalating the dispute to a more senior level within both the Department and the Provider with a view to reaching a settlement.
- b. Any dispute not capable of resolution by the parties in accordance with the terms of Clause 23 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- c. 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

- a. The Provider 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.
- b. The Provider shall take all reasonable steps to secure the observance of Clause 24.1 by all servants, employees or agents of the Provider and all contractors and sub-contractors employed in the execution of the Contract.

26. LAW AND JURISDICTION

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

As witness the hands of the parties

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

Signature

Name in CAPITALS

Authorised to sign for and on
behalf of Archway Learning Trust

Signature

Name in CAPITALS

Position in Organisation

Address in full

Department for Education

Sanctuary Buildings

Great Smith Street

London

SW1P 3BT

Date

Position in Organisation

Address in full

Date

SCHEDULE 1

PART 1: THE SERVICES

The overarching purpose of SKE is to support recruitment to ITT programmes. The Department does not set out the full ITT curriculum for trainee teachers, and SKE courses therefore do not follow a pre-determined curriculum or delivery mode.

Providers shall develop each SKE course to ensure that the course:

- supports conditional offers to places on ITT courses or High Potential Initial Teacher Training (HPITT) programmes;
- is only offered to Participants who, without SKE, would be highly unlikely to meet the subject knowledge requirements of the [Teachers' Standards](#) by the time their ITT course is complete;
- enables Participants to train to teach their chosen subject;
- includes a mechanism for informing the ITT provider of progress made by the Participant on completion of the course;
- ends before the Participant completes their ITT course and before a recommendation for the award of Qualified Teacher Status (QTS) is made; and,
- is no longer than the minimum duration recommended by the ITT provider to address the subject knowledge gaps of a Participant.

Providers must develop SKE courses to be modular and flexible to ensure that each Participant receives a tailored programme that provides the optimum package of support to enable them to meet the subject knowledge requirements of their conditional ITT offer.

The first SKE academic year in which delivery will take place will run from 1 October 2021 – 30 September 2022.

Providers will be expected to obtain the required management information set out in the contract. They will be expected to meet the KPI requirement relating to social value, but will not be subject to any financial penalties.

PART 2: THE PROVIDER'S SOLUTION

Providers shall develop and deliver SKE courses that meet the following aims:

- prospective ITT candidates who do not have adequate subject knowledge are provided with the opportunity to undertake teacher training.
- recruitment to ITT courses in priority and hard-to-recruit subjects is supported.

Providers shall design and deliver courses to meet the following objectives:

- the teaching of subject knowledge that fills gaps in Participants' knowledge sufficient to demonstrate good subject and curriculum knowledge (Standard 3 of the Teachers' Standards).
- delivery of courses that are appropriate for the subject, phase and age range that the Participants will be teaching and aligned to the entry requirements set by the ITT provider.
- course content is linked to core knowledge requirements underpinning teaching of the subject.

SCHEDULE 2: PRICING AND PERFORMANCE MEASURES

PART 1: PRICING

1. Charges

- 1.1. The Department shall pay the Provider the Charges as set out in Tables 1 & 2 below, for provision of the Services subject to satisfying the Department's payment conditions for the delivery of Services.
- 1.2. The Charges are inclusive of all expenses incurred by the Provider in relation to its provision of the Services and unless agreed otherwise in writing between the Provider and the Department, the Provider shall not be entitled to claim any expenses in addition to the Charges.
- 1.3. Indexation shall not apply to the Charges.
- 1.4. Invoices shall be submitted on or after the twentieth (20) Day of the calendar month but before the end of the calendar month after the Services were delivered. Any deadline that falls on either a Saturday or Sunday or public holiday shall automatically be extended to the next Working Day.
- 1.5. At any time during the Term (including, for the avoidance of doubt, at any time before and/or after payment by the Department to the Provider) the Department shall be entitled to validate any claim for payment made by the Provider. At all times the Provider shall provide all necessary assistance as requested by the Department (including without limitation, procuring the consent of Participants and ITT Providers) to enable the Department to validate any claim for payment made by the Provider.
- 1.6. Charges are set on the predetermined reducing Unit value related to the volume of SKE Courses delivered in a SKE Academic Year in a given SKE Subject. Table 1 below sets out the Unit values and Table 2 sets out the payment for SKE Courses in each SKE Subject based on their length and relevant payment Band.
- 1.7. The provisions of this Schedule shall apply to all Ordered Services for each SKE Course delivered in a SKE Subject. SKE Course volumes will be calculated across all Ordered Services by SKE Subject.
- 1.8. The Unit values are exclusive of VAT.

Table 1: Unit values

	Course volume by subject	Banding	Unit value
Band 1	0 to 19	100%	£200
Band 2	20 to 49	90%	£180
Band 3	50 to 99	80%	£160
Band 4	100 to 999	70%	£140
Band 5	1000+	60%	£120

Table 2: Unit Values x SKE Course length

Course Length	Payment @ Band 1	Payment @ Band 2	Payment @ Band 3	Payment @ Band 4	Payment @ Band 5
8 weeks	£1,600.00	£1,440.00	£1,280.00	£1,120.00	£960.00
12 weeks	£2,400.00	£2,160.00	£1,920.00	£1,680.00	£1,440.00

16 weeks	£3,200.00	£2,880.00	£2,560.00	£2,240.00	£1,920.00
20 weeks	£4,000.00	£3,600.00	£3,200.00	£2,800.00	£2,400.00
24 weeks	£4,800.00	£4,320.00	£3,840.00	£3,360.00	£2,880.00
28 weeks	£5,600.00	£5,040.00	£4,480.00	£3,920.00	£3,360.00

- 1.9. The above Unit values and course costs are based on full time course delivery and do not include bursary payments. Pricing for part time courses will be calculated using the same Unit values and bandings but at a pro-rata rate such that, for example, the pro-rated Unit value for Band 1 8 week SKE Course completed part time over 16 weeks will be £100.00.

2. Adjustment of the Charges

- 2.1. The Charges may only be varied by means of a CCP, and in accordance with the provisions of this Contract
- 2.2. Either Party may, through the Change Control Process propose a Gainshare Payment mechanism.
- 2.3. Any such Gainshare Mechanism proposals shall be on the basis that any the Department and the Provider shall share equally (50/50) in any savings generated in the deliver of the Services by the Provider.
- 2.4. In order to consider whether to propose a Gainshare Mechanism the Department may utilise the Open Book Data and MI returns to compare the Provider's actual costs for the delivery of the Services to the Unit values.

3. Charges to Participants and ITT Providers.

- 3.1. The Provider nor its agents or Sub-Contractors shall levy any charge on Participants nor ITT Providers in respect of the Services except as expressly agreed in advance and in writing by the Department (at its sole discretion).

4. Bursary Payments

- 4.1. All eligible Participants are eligible for Bursary Payment at the flat rate of £175 per Unit for the agreed duration of the SKE Course (pro-rated for part time attendance). Eligibility for Bursary Payments is defined in the SKE Operational Handbook and maybe updated by the Department from time to time.
- 4.2. Where an Order is placed under the Call-Off Contract the Department will make the Bursary Payments to the Provider for pass through to eligible Participants.
- 4.3. Bursary Payments are not part of the Charges paid to the Provider for the Services. All Bursary Payments must be managed by the Provider in accordance with Annex 1 of this Schedule and the guidance provided in the [ITT bursaries funding manual](#) and as updated by the Department from time to time.
- 4.4. Bursary Payments must be passed directly from the Provider to eligible Participants. The Provider must have adequate audit and governance processes to evidence the prompt and complete payment of Bursary Payments to eligible Participants and must provide evidence of such processes on the Department's request.
- 4.5. Where an eligible Participant withdraws from a SKE Course no further Bursary Payments will be made and any outstanding payments must be returned to the Department in full.

- 4.6. The Department may, at its absolute discretion, withhold flow down of Bursary Payments in any circumstances where it considers;
- 4.6.1. A Provider may be submitting SERs setting out Bursary Payments attributable to Participants who fall outside of the eligibility criteria for such Bursary Payments;
 - 4.6.2. A Provider may not be flowing down Bursary Payments to eligible Participants in accordance with the Contract;
 - 4.6.3. there is evidence to suggest a Provider itself be benefitting commercially or financially from Bursary Payments
 - 4.6.4. there is evidence to suggest that activity between the Provider and any ITT Provider is resulting in any element of Bursary Payment not being flowed down by the Provider to eligible Participants in accordance with the requirements of the Contract
 - 4.6.5. the Provider does not have appropriate financial, audit and governance procedures in place in relation to its administration of Bursary Payments in accordance with the Contract and paragraph 1.5 above in particular;
 - 4.6.6. there is evidence of any fraud or irregularity pursuant to clause [25] of the Contract;
 - 4.6.7. flow down of Bursary Payments has been as a consequence provision by the Provider to the Department of wrong, inaccurate or misleading information.
- 4.7. Where the Department is satisfied, acting reasonably, that any of the circumstances set out in paragraph 4 have arisen then, whether or not it has exercised its rights to suspend flow down of Bursary Payments in accordance with paragraph 1.4, it will recover any Bursary Funding which has already passed down to the Provider which has not been passed down to eligible Participants.
- 4.8. Without prejudice to any of the preceding provisions of this paragraph 3, or section of the Contract (Termination) or otherwise the Department may terminate this Contract with immediate effect, on written notice, where any of the circumstances set out in paragraph 1.7 have arisen.

5. NOT USED

6. Payment Procedure

- 6.1. Prior to submitting an invoice for payment Providers should follow the payment procedure outlined below.

6.2. Raising a Purchase Order

- 6.2.1. Between 1 July and 31 August immediately prior to the relevant SKE Academic Year the Provider shall submit their Recruitment Plan (as set out more particularly in Schedule 2 (Specification) paragraphs 3.17).
- 6.2.2. Upon receipt of the Recruitment Plan the Department will confirm funding allocations and raise a Purchase Order.
- 6.2.3. In the event that Services are Ordered by the Department and following the Department's authorisation to do so, in accordance with the payment process, the Provider will issue an invoice in relation to the delivery of the Services. The invoice must include the Purchase Order number.

- 6.2.4. The Provider must monitor delivery against their Purchase order throughout the SKE Academic Year. In the event that Provider identifies that it is likely to exceed the estimated capacity set out in the Purchase order then it must notify the Department in writing, prior to delivering Services in excess of the stated Purchase Order.
- 6.2.5. Where the Department accepts the Provider's increase in estimated capacity the Purchase Order will be amended.
- 6.2.6. Where the Department does not accept the Provider's increase in estimated capacity the Purchase Order will not be amended.
- 6.2.7. All invoices must quote the correct Purchase Order number. Any invoice submitted above the agreed value of the Purchase Order will not be paid unless and until the Department agrees an increase in estimated capacity. Any such agreement being wholly at the discretion of the Authority.
- 6.2.8. Nothing in paragraphs 4.2.1 to 4.2.7 above related to the submission of Recruitment Plans and the raising of Purchase Orders shall constitute an Order by the Department for Service nor any guarantee of an Order by the Department for Services. It is purely an administrative process to allow the Department to establish an efficient invoicing process, monitor demand for SKE Courses, and track budget spend across the Framework Agreement.
- 6.2.9. In the event that the Department identifies that there is a risk of total spend across the Framework Agreement exceeding the annual budget the Department reserves for SKE Courses the Department reserves the right to reduce or limit individual Purchase Orders to reflect the finite funding position. Such reduction or limitations may include prioritising certain subjects or course lengths over others to maximise the available budget in line with strategic priorities.

7. Payment Process

- 7.1. On receipt of an application from a Participant, the Provider will submit one combined SER form by the 10th calendar day of each month, detailed all participants starting SKE in that current month for the SKE academic year to which the Purchase Order relates. Any requests that fall beyond the SKE academic year cannot be processed until plans for that SKE academic year have been submitted and agreed and a new Purchase Order raised.
- 7.2. Upon receipt of the SER form, the Department will conduct eligibility checks for each funding request on the SER. If the Provider does not have a Purchase Order in place, or the Participant is not eligible for funding the individual(s) on the SER request will be rejected. The Provider will be notified of any rejections via the return of the SER on or before the 19th calendar day of the month.
- 7.3. Where the Provider is eligible to receive payment, and the SER submitted are valid, the bursary and provider payment will be paid monthly on a pro rata basis throughout the life of the SKE course for each Participant.
- 7.4. The Charges and Bursary Payments will be made in arrears. Failures to record the start date of the SKE Course in the SER form will result in the form being rejected by the Department. If the course starts before the SER is submitted, this will be at the Provider's risk – no payments will be released for ineligible candidates.
- 7.5. Once checked the Department will return the SER, detailing and approving the amounts to be invoiced for each Participant on SER.

- 7.6. The Provider must submit invoices through the standard Department process detailed at Annex 2. The invoice must match the schedule of payments as set out in paragraph 5.7. Incorrect invoices will be rejected by the Department and will have to be re-submitted with a consequent delay in payment of Charges and pass through of Bursary Funding.
- 7.7. All valid and undisputed invoices received by the Department will be paid accordance with the government's Prompt Payment Policy (<https://www.gov.uk/guidance/prompt-payment-policy>).

Monthly Timetable

Day of the month	Action
10 th	Deadline to submit SERs to be included in the current month's invoice.
19 th	SER checked and returned to providers which covers the monthly payment breakdown and amount to be invoiced
20 th	Providers can submit invoices based on details included in SER / monthly payment breakdown

- 7.8. The Provider must submit exceptions to Department for SERs that have already been processed where there is any discrepancy between the information on the SER and the Services delivered, including but not limited to;
- 7.8.1. where a Participant does not start their SKE Course;
 - 7.8.2. where a Participant starts their SKE Course but later withdraws;
 - 7.8.3. where the request for Charges and pass through Bursary Payment changes, for example where it is agreed between the Participant, the Provider and the ITT Provider that the Participant may change the length of their SKE Course
- 7.9. At the end of each SKE Academic Year the Department will seek assurance that the Charges paid to the Provider reflect the Services delivered and that the Bursary Costs have all been passed through to the eligible Participants, using the annual financial reconciliation process. This process will include reviewing the amount of Charges paid and Bursary Costs passed through as against amount of time each Participant spends on their SKE Course.

Participant does not start or withdraws

- 7.10. The Department is only obliged to pay Charges to the Provider for each full Unit of SKE Course delivered to an eligible Participant and an eligible Participant is only entitled to a Bursary Payment for each week of SKE Course that they complete.
- 7.11. Department will recover from the Provider any overpayment of Charges, and any Bursary Payments provided to the Provider for pass through, which have been made to the Provider and which do not relate to delivery to a Participant of a completed Unit.
- 7.12. Providers must inform Department when a Participant does not start or withdraws from a SKE Course by submission of an SER form to the Department. For withdrawals this must include the date the Participant started and withdrew from the SKE Course.

- 7.13. Where an eligible Participant does not start their SKE Course, they are not entitled to receive any Bursary Payment and the Provider is not entitled to invoice any Charges associated with that eligible Participant.
- 7.14. Where a Participant starts their SKE Course but later withdraws, the Provider must notify the Department as soon as possible by submission of an SER form to the Department.

Participants undertaking SKE Course during their ITT Programme.

- 7.15. The following Participants are not eligible to receive Bursary Payments;
- 7.15.1. Participants undertaking a SKE Course in parallel with a full-time ITT Programme;
 - 7.15.2. Participant undertakes a SKE Course in parallel with a school direct, salaried ITT Programme, who are in receipt of a school direct ITT Programme salary;
 - 7.15.3. Participants receiving a salary on a High Performing ITT Programme or under a postgraduate teaching apprenticeship.
- 7.16. The Provider must ensure that they only detail on the SER Bursary Payments to which an eligible Participant is entitled. Any Bursary Payments passed by the Department to the Provider for an eligible Participant who is not eligible for that Bursary Payment will be recovered from the Provider by the Department, whether the Provider has passed that Bursary Payment through to the Participant. The Provider is wholly responsible for ensuring that it correctly identifies a Participant's eligibility for Bursary Payments or otherwise and notified the Department accordingly.

Pending Degree Classification

- 7.17. Participants are not eligible for Bursary Payments until they have had their final degree classification confirmed.
- 7.18. In these circumstances the Department will release Bursary Payments to the Provider to hold on trust in readiness for pass through to the Participant when they become eligible for receipt. The Provider should ensure that these Bursary Payments are held safely and separately from other Charges and Bursary Payments and are not passed to the Participant until their eligibility is confirmed on receipt of the degree classification.
- 7.19. Where a Provider passes through a Bursary Payment to a Participant before they receive their degree classification it does so wholly at its own risk.
- 7.20. The Department reserves the right to recover, through the annual financial reconciliation process, from the Provider any Bursary Payment passed to them in relation to a Participant who is awaiting confirmation of degree classification, whether that Bursary Payment has been passed through by the Provider to the Participant.
- 7.21. Providers are referred to section 3 (a) of the [ITT bursary guidance](#), as updated by the Department from time to time, for more information on eligibility for Bursary Payments.
- 7.22. Providers will be asked to confirm the degree class for Participants as part of the annual financial reconciliation process. Providers must retain evidence of degree class as set out in the [Monitoring, analysis and assurance](#) section below, to be provided to the Department at its request.

8. Annual Assurance

- 8.1. Following the end of each SKE Academic Year the Department will send the Provider the [Annual Financial Reconciliation Return] with accompanying guidance.
- 8.2. The Department will pre-populate the Annual Financial Reconciliation Return based on the SERs submitted by the Provider to the Department during the SKE Academic Year to which the Annual Financial Reconciliation Return relates.
- 8.3. The Provider must complete the and submit the Annual Financial Reconciliation Return to the Department by the date specified by the Department in the guidance.
- 8.4. The Provider must share the findings of the independent audit with the Department and where it identifies any over or under payment then, in agreement with the Department, an invoice or credit note.
- 8.5. The Department will review the submitted Annual Financial Reconciliation Returns. The Department will compare the detail submitted against:
 - 8.5.1. the partly pre-populated template issued by the Department to the Provider pursuant to paragraph 6.2;
 - 8.5.2. the information supplied by Provider in the completed return;
 - 8.5.3. the Provider's Recruitment Plan for the SKE Academic Year, and;
 - 8.5.4. our Departments own financial records for each Participant by reference to the Approved Participant List.
- 8.6. Where the Department accepts the Provider's, Annual Financial Reconciliation Return as correct it will confirm this to the Provider.
- 8.7. Where the Department identifies any discrepancies in the Provider's Annual Financial Reconciliation Return it will notify the Provider and require the Provider to clarify the discrepancies.
- 8.8. The Department will recover from the Provider any Charges and flowed down Bursary Payments where the Provider has not provided satisfactory evidence to address a discrepancy.

9. Recovery of Charges and Bursary Payments

- 9.1. The Department reserves the right to recovery Charges and Bursary Payments, following the Annual Reconciliation Return process or at such other time as a right of recovery becomes known to the Department as follows:
 - 9.1.1. Pursuant to paragraphs 5.13, 5.18, 5.22 and 6.8;
 - 9.1.2. Where the Department is satisfied, acting reasonably, that Charges and/or Bursary Payments have not been incurred or passed down in accordance with this Contract and the SKE Programme requirements generally.

10. Recovery of Sums Due

- 10.1. Whenever under the Contract any sum of money is recoverable from the Provider, or payable by the Provider (including any sum which the Provider is liable to pay to the Department in respect of any breach of the Contract), the Department may unilaterally deduct the sum from any sum due, or which at any later time may become any other agreement or contract with the Department or the Crown.
- 10.2. 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.

- 10.3. The Provider shall make any payments due to the Department without any deductions whether by way of offset, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by Department to the Provider.
- 10.4. All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society as the recipient Party may from time to time direct.

11. Disputed Claims

- 11.1. Notwithstanding paragraph 1 of this Schedule 2, payment by the Department of all or any part of any Charges rendered or other claim for payment by the Provider shall not signify approval. The Department reserves the right to verify Charges after the date of payment and subsequently to recover any sums, which have been overpaid.
- 11.2. If any part of a claim rendered by the Provider is disputed or subject to question by the Department either before or after payment then, upon request, the Provider shall provide such further documentary and oral evidence as the Department may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Provider shall promptly provide such evidence in a form satisfactory to the Department.
- 11.3. If any part of a claim rendered by the Provider is disputed or subject to question by the Department, the Department shall not withhold payment of the remainder.
- 11.4. If any fee rendered by the Provider is paid but any part of it is disputed or subject to question by the Department and such part is subsequently agreed or determined not to have been properly payable then the Provider shall forthwith repay such part to the Department.
- 11.5. The Department shall be entitled to deduct from sums due to the Provider 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.

12. Continuous Improvement

- 12.1. Should the Provider's costs in providing the Services to the Department be reduced as a result of any changes implemented as a result of a Continuous Improvement plan, all of the cost savings shall be passed on to the Department by way of a reduction in the Charges for the Services agreed in accordance with Schedule 5 (Contract Change Procedure).

ANNEX 1 – BURSARY PAYMENT GOVERNANCE

- 1.1 It is acknowledged that the flow down of Bursary Payment by the Department to the Provider is not being made as consideration for the provision of Services.
- 1.2 Bursary Payments will be passed from the Department to the Provider in monthly in arrears.
- 1.3 The Provider must make the Bursary Payments to the Eligible Participants within 7 Working Days of receipt of the same from the Department.
- 1.3 The Department reserves the right to vary the amount or frequency of Bursary Payments or withdraw to withdraw this funding altogether.
- 1.4 The Provider acknowledges that Bursary Payments are not consideration for any taxable supply of VAT purposes. Providers understand and acknowledge that the Department's obligation does not extend to paying any amounts in respect of VAT in addition to Bursary Payments.
- 1.5 Providers must have in place a robust system of internal financial control so as to ringfence Bursary Payments and safeguard them against fraud or theft. The Provider shall develop and maintain such systems in accordance with generally accepted accounting practices having regard to the amount of Bursary Payment and size of the Provider organisation, and shall be required to ensure provision of internal/external auditors report on the adequacy or otherwise of that system, when so requested by the Department.
- 1.6 The Department may review the Provider's financial controls either itself, or by through appointment of third party in accordance with HM Treasury's [Public Sector Internal Audit Standards](#).

ANNEX 2 - INVOICING

1. Invoices shall be sent on or after the twentieth (20th) day, but before the end of the relevant month electronically by email to accountspayable.OCR@education.gov.uk, quoting the Contract reference number. To request a statement, please email accountspayable.BC@education.gov.uk, quoting the Contract reference number.

The Department undertakes to pay correctly submitted invoices within 5 days of receipt. The Department is obliged to pay invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Department. An invoice is a “**Valid Invoice**” if it is legible and includes:

- (i) the date of the invoice;
 - (ii) Provider’s full name and address;
 - (iii) Contract reference number and PO number;
 - a(iv) the charging period;
 - (v) a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
 - (vi) days and times worked (if applicable); and
 - (vii) VAT if applicable.
2. The Department shall not pay an invoice which is not a Valid Invoice.
 3. The Department intends to pay Valid Invoices within 5 days of receipt. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause 1.10 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.
 4. The Department shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Provider for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
 5. At the end of the Term the Provider shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the Department. The final invoice shall be submitted not later than 30 days after the end of the Term.
 6. The Department shall not be obliged to pay the final invoice until the Provider has carried out all of the Service.
 7. The Provider shall ensure that a term is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Providers within 30 days from the receipt of a valid invoice.
 8. If the Department disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within 10 Business Days notify the Provider of the reasons for disputing the invoice. The Department may withhold the disputed amount pending resolution of the dispute.
 9. The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 36.

ANNEX 3 – SCHEDULE 2 – CONTRACT PRICING INFORMATION

1. The Provider's allocation for the delivery of subject knowledge enhancement courses in the first six months, that is October 2021 – March 2022, of the 2021/22 SKE Academic Year shall be as outlined in Table 3 below:
2. Note, the Provider must not exceed their **total funding allocation** shown in Table 3, although the Provider can move funding between their programme and bursary allocation.
3. The total funding allocation shown in Table 3 is the maximum that a Provider can claim in the six months of the 2021/22 SKE Academic Year.

Table 3

Programme Funding	Bursary Funding	Total Funding
██████████	██████████	██████████

SCHEDULE 2: PART 2: PERFORMANCE

Service Levels and KPIs

1. The objectives of the Service Levels are to:
 - 1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Department;
 - 1.2 provide a mechanism whereby the Department can identify and resolve poor performance; and
 - 1.3 incentivise the Provider to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.
 - 1.4 The Service Levels shall apply, cumulatively, across all of the Ordered Services.

Key Performance Indicators (KPIs)

2. This schedule sets out the KPIs against which the Provider and the Department shall measure the Provider's performance. The KPIs shall be measured cumulatively, across all of the Ordered Services.
3. The Provider shall monitor its performance against of each of the KPIs 1 (Training Satisfaction) and 2 (Output Measures 1), across all of the Ordered Services that it is delivering and send the Department a report detailing the achievement of KPIs in accordance with the provisions of this schedule.
4. The Department will monitor the Provider's performance against each of the KPIs 3 (Output Measures 2) and 4 (Compliance Measures).
5. The Provider confirms that it has taken Performance Measure and the consequences for failure to achieve the Performance Measure into account and both Parties agree that the Performance Measures and consequences are a reasonable method of managing poor performance.
6. In accordance Government best practice, the Department reserves the right to publish headline KPI figures and data from the KPIs will be included in the SKE Directory to support Participant choice of Provider.

Performance Standards/Measures

7. The Provider must meet the Performance Measure for each identified KPI as set out in Table 1 below within the Relevant Period.
8. If during a Relevant Period the Provider achieves a KPI, no consequences will apply in respect of that KPI.
9. A failure to meet a KPI in the Relevant Period will be considered a "Service Failure"
10. Before recording a Service Failure, the Department will consider any external factors outside the control of the Provider and/or any action taken by the Provider in an attempt to address the Service Failure.

Table 1: KPIs

	KPI	Measure	Relevant Period (for collation and reporting of KPIs)
1	Training satisfaction	<p>The Provider issues a participant survey to 100% of Participants who have completed or withdrawn from an SKE Course.</p> <p>The Provider secures a return of completed participant surveys from 60% of Participants.</p> <p>90% of Participants who complete the participant survey agree that as a result of undertaking the SKE Course they have sufficient subject knowledge to train to teach their chosen subject and the SKE course identified and met their individual learning needs</p>	<p>Six Monthly</p> <p>Provider to report on participant satisfaction following completion of the training.</p>
2	Output measures	No more than 6% of Participants withdraw from their SKE Course.	<p>Annually</p> <p>Monitored by DFE via SER form</p>
3	Outcome measures	85% of Participants access Initial Teacher Training.	<p>Annually</p> <p>The Department will measure this output through analysis of SKE MI and ITT Census.</p>
4	Compliance measures	<p>The Provider returns 100% of MI requested by the Department in full and on time</p> <p>The Provider submits 100% of SER variations to the DFE by day 10 of each month</p>	<p>Quarterly</p> <p>Monitored by the Department.</p>

11. Where on the Department's annual measurement, there is evidence that the outcomes of Participants attending the Provider's SKE Course fall consistently short of the Departments overall target expectations as set out above, and the Department, acting reasonably, is satisfied that that the shortfalls are primarily due to SKE Course quality rather than other factors the Department reserves the right to categorise the shortfall as a Service Fault and the provisions of paragraphs 8 to 10 will apply.

Provider Contribution to the overall success of the SKE Programme through Social Value

12. In addition to the KPIs set out in Table 1 above the Department will also be applying the social value KPI outlined in Table 2 and this will not be subject to clause 26

Consequence of Failure to meet KPIs in Table 1. The Department will support Providers in implementing the Social Value measure.

Table 2: KPIs COVID-19 Recovery

No.	KPI	Measure	Relevant Period (for collation and reporting of KPIs)
5	Outcome Measure	100% of all providers on the Framework Agreement to have implemented or worked towards the 6 standards in the Mental Health at Work commitment or their internal equivalent policy.	Annually As part of the annual review by the Department, Provider to provide written update on implementing standards or equivalent.

Performance Monitoring

13. The Provider shall manage the Contract and any Sub-contractors, including addressing poor performance. The Provider must therefore ensure that all systems and processes used for the monitoring and recording of performance are robust, provide a clear audit trail of evidence and give confidence to the Department that the Provider and its supply chain are delivering the Services in accordance with its contractual obligations
14. The Department will regularly monitor Provider performance.
15. Providers delivering in excess of £250,000 of Services in a SKE Academic Year will be required to attend bi-annual Contract Performance Review meetings with the Department.
16. Providers delivering less than £250,000 of Services in a SKE Academic Year may be required by the Department, at its discretion and on reasonable notice, to attend a Contract Performance Review meeting with the Department.
17. The Provider will be required to appoint a named Provider Performance Manager who will cooperate with the Department Performance Manager to ensure that the Services are delivered as specified in the Contract and that required standards and Service Levels are met.

Contract Performance Reviews

18. Further to paragraph 14 the purpose of the Contract Performance Reviews is to encourage an open and regular dialogue between the Parties with the purpose of ensuring that the Services, including the contractual standards and outputs are being delivered appropriately and to drive up the performance and quality of the Services. They will encourage the Parties to review performance, discuss opportunities for continuous improvement and raise and address any complaints or persistent problems encountered with the Contract. Where issues cannot be immediately addressed, the Department and the Provider may follow the dispute resolution process detailed in clause 24.
19. Contract Performance Review meetings between the Department and the Provider shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract.
20. Contract Performance Review meetings must be formally undertaken and documented.

21. The Department may require the Provider to provide additional Management Information to facilitate a Contract Review Meeting and to arrange where necessary access to any of its delivery locations, including those operated by Sub-contractors.
22. Any improvements or actions agreed between the Parties at a Contract Performance Review meeting will be recorded in the form of a performance improvement plan and will form part of continuous improvement activity by the Provider. It will be the Provider's responsibility to develop the performance improvement plan which will be discussed and agreed with the Performance Manager

Contractor Management Information (MI) Requirements

23. The Department intends, wherever it can, to capture and collate information through its IT system(s). However, the Department does reserve the right to make reasonable requests for information (at no additional charge) from the Provider including ad-hoc requests for information from time to time
24. The Provider shall supply Management Information relevant to the delivery of the Services to the Department, using formats and to timescales as detailed in the Specification or as are otherwise notified to the Provider by the Department
25. The Department shall be entitled to amend the reporting frequency and format in respect of any or all Management Information or waive the requirement for any aspect of the Management Information to be reported upon by giving the Provider not less than one (1) Month's notice in writing

Consequence of Failure to Meet KPIs

26. Without prejudice to any other rights or remedies arising under this Contract, including under Clause 10 (Termination) for material breach, if the Provider incurs a Service Failure in any two out of three consecutive Relevant Periods, the Provider acknowledges and agrees that the Department shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions;
 - 26.1 The Department shall be entitled to require the Provider, and the Provider agrees to prepare and provide to the Department, a plan for improvement (an **"Improvement Plan"**) within ten (10) Working Days of a written request by the Department for such Improvement Plan. Such Improvement Plan shall be subject to the Department's prior approval and the Provider will be required to implement any approved Improvement Plan, as soon as reasonably practicable;
 - 26.2 The Department shall be entitled to require the Provider, and the Provider agrees to attend, within a reasonable time one (1) or more meetings at the request of the Department in order to resolve the issues raised by the Department in its notice to the Provider requesting such meetings;
 - 26.3 Department shall be entitled to serve an notice of improvement ("Improvement Notice") on the Provider and the Provider shall implement such requirements for improvement as set out in the Improvement Notice;
27. In the event that the Department has, in its absolute and sole discretion, invoked one or more of the remedies set in paragraph 26 above the Department may suspend the Provider from the Framework pending the Department being satisfied that the Provider has;
 - 27.1 implemented the requirements for improvement set out in the Improvement Notice; and/or
 - 27.2 implemented an Improvement Plan approved by the Department.
28. Whether or not the Department has exercised its rights under pursuant to paragraph 27 in the event that the Department has, in its absolute and sole discretions invoked

one or more of the remedies set out in paragraph 27 above and the Provider either;

28.1 fails to implement such requirements for improvement as set out in the Improvement Notice; and/or

28.2 fails to implement an Improvement Plan approved by the Department,

then (without prejudice to any other rights and remedies of termination provided for in this Contract), the Department shall be entitled to terminate this Contract with immediate effect by notice in writing.

SCHEDULE 3: ADDITIONAL CLAUSES

Departmental Security Standards

1. Departmental Security Standards for Business Services and ICT Contracts

<p>“BPSS” “Baseline Personnel Security Standard”</p>	<p>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</p>
<p>“CCSC” “Certified Cyber Security Consultancy”</p>	<p>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</p>
<p>“CCP” “Certified Professional”</p>	<p>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</p>
<p>“CC” “Common Criteria”</p>	<p>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.</p>
<p>“CPA” “Commercial Product Assurance” [formerly called “CESG Product Assurance”]</p>	<p>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</p>
<p>“Cyber Essentials” “Cyber Essentials Plus”</p>	<p>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.</p> <p>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/</p>

<p>“Data”</p> <p>“Data Controller”</p> <p>“Data Processor”</p> <p>“Personal Data”</p> <p>“Sensitive Personal Data”</p> <p>“Data Subject”, “Process” and “Processing”</p>	<p>shall have the meanings given to those terms by the Data Protection Act 2018</p>
<p>"Department's Data"</p> <p>"Department's Information"</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Provider by or on behalf of the Department; or</p> <p>(ii) which the Provider is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;</p>
<p>“DfE”</p> <p>“Department”</p>	<p>means the Department for Education</p>
<p>“Departmental Security Standards”</p>	<p>means the Department's security policy or any standards, procedures, process or specification for security that the Provider is required to deliver.</p>
<p>“Digital Marketplace / G-Cloud”</p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.</p>
<p>“FIPS 140-2”</p>	<p>this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled ‘Security Requirements for Cryptographic Modules’. This document is the de facto security standard used for the accreditation of cryptographic modules.</p>
<p>General Data Protection Regulation (GDPR)</p>	<p>Replaces Data Protection Act clauses for use in contracts that are live on or after 25th May 2018.</p>
<p>“Good Industry Practice”</p> <p>“Industry Good Practice”</p>	<p>means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>

<p>“Good Industry Standard”</p> <p>“Industry Good Standard”</p>	<p>means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>“GSC”</p> <p>“GSCP”</p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: https://www.gov.uk/government/publications/government-security-classifications</p>
<p>“HMG”</p>	<p>means Her Majesty’s Government</p>
<p>“ICT”</p>	<p>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</p>
<p>“ISO/IEC 27001” “ISO 27001”</p>	<p>is the International Standard for Information Security Management Systems Requirements</p>
<p>“ISO/IEC 27002” “ISO 27002”</p>	<p>is the International Standard describing the Code of Practice for Information Security Controls.</p>
<p>“ISO 22301”</p>	<p>is the International Standard describing for Business Continuity</p>
<p>“IT Security Health Check (ITSHC)”</p> <p>“IT Health Check (ITHC)”</p> <p>“Penetration Testing”</p>	<p>means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.</p>
<p>“Need-to-Know”</p>	<p>the Need-to-Know principle is employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.</p>
<p>“NCSC”</p>	<p>The National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Department for Information Assurance. The NCSC website is https://www.ncsc.gov.uk</p>
<p>“OFFICIAL”</p> <p>“OFFICIAL-SENSITIVE”</p>	<p>the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.</p> <p>the ‘OFFICIAL–SENSITIVE’ caveat is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the Government Security Classification Policy.</p>

<p>“Secure Sanitisation”</p>	<p>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</p> <p>The disposal of physical documents and hardcopy materials advice can be found at: https://www.cpni.gov.uk/secure-destruction</p>
<p>“Security and Information Risk Advisor” “CCP SIRA” “SIRA”</p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</p>
<p>“SPF” “HMG Security Policy Framework”</p>	<p>This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely. https://www.gov.uk/government/publications/security-policy-framework</p>
<p>“Tailored Assurance” [formerly called “CTAS”, or, “CESG Tailored Assurance”]</p>	<p>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</p>

- 1.1. The Provider shall comply with Departmental Security Standards for Contractors, which include but are not constrained to the following clauses;
- 1.2. The Provider shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.3. The Provider shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4. The Provider shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service,

and will handle this data in accordance with its security classification. (In the event where the Provider has an existing Protective Marking Scheme then the Provider may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).

- 1.5. The Provider shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 1.6. Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- 1.7. Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 1.9 and 1.10 below.
- 1.8. Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the Provider or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.9. All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the Provider or sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.10. Whilst in the Provider's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- 1.11. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 1.12. At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Provider'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 Provider or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.

- 1.13. Access by Provider or sub-contractor staff to Departmental Data shall be confined to those individuals who have a “need-to-know” in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Provider or sub-contractor staff must complete this process before access to Departmental Data is permitted.
- 1.14. All Provider or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 1.15. The Provider shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the Provider 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 Provider has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.16. Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, or any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- 1.17. The Provider shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 1.18. The Provider or sub-contractors providing the service will provide the Department with full details of any storage of Departmental Data outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management, support or development function from outside the UK. The Provider or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- 1.19. The Department reserves the right to audit the Provider 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 Provider’s, and any sub-contractors, compliance with the clauses contained in this Section.
- 1.20. The Provider shall contractually enforce all these Departmental Security Standards for Providers onto any third-party contractors, sub-contractors or partners who could potentially access Departmental Data in the course of providing this service.
- 1.21. The Provider and sub-contractors shall undergo appropriate security assurance activities as determined by the Department. The Provider and sub-contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation such as completing the DfE Security Assurance Model (DSAM) process or the Business Service Assurance Model (BSAM). This will include obtaining any necessary professional security resources required to support the Provider and sub-contractor’s security assurance activities such as: a NCSC Certified

Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA)

SCHEDULE 4: FINANCIAL DISTRESS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Credit Rating Level”	a credit rating level as specified in Annex 1 Part 2;
“Credit Rating Threshold”	the minimum Credit Rating Level for the Provider;
“Rating Agencies”	the rating agencies listed in Annex 1 Part 1; and
“Financial Distress Event”	the occurrence of one or more of the events listed in Paragraph 3.1 of this Schedule 6 (<i>Financial Distress</i>);
“Financial Distress Service Continuity Plan”	a plan setting out how the Provider will ensure the continued performance and delivery of the Services in accordance with the Contract in the event that a Financial Distress Event occurs;

2.1 The Provider shall promptly notify (or shall procure that its auditors promptly notify) the Department in writing if there is any downgrade in the credit rating issued by any Rating Agency for the Provider (and in any event within 5 Working Days of the occurrence of the downgrade).

2.2 If there is any downgrade credit rating issued by any Rating Agency for the Provider, the Provider shall ensure that the Provider’s auditors thereafter provide the Department within 10 Working Days of the end of each Year and within 10 Working Days of written request by the Department (such requests not to exceed 4 in any Year) with written calculations of the quick ratio for the Provider as at the end of each Year or such other date as may be requested by the Department. For these purposes the “quick ratio” on any date means:

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Provider;
- B is the value of all marketable securities held by the Provider determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Provider; and
- D is the value at the relevant date of the current liabilities of the Provider.

2.3 The Provider shall:

- (a) regularly monitor the credit ratings of the Provider with the Rating Agencies; and
- (b) promptly notify (or shall procure that its auditors promptly notify) the Department in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Provider first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 3.1(a), the credit rating of the Provider, shall be deemed to have

dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Provider at or below the applicable Credit Rating Level.

3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 In the event of:

- (a) the credit rating of the Provider dropping below the applicable Credit Rating Threshold;
- (b) the Provider issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Provider;
- (d) the Provider committing a Material Breach of covenant to its lenders;
- (e) a Sub-contractor notifying the DFE that the Provider has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- (f) any of the following:
 - (i) commencement of any litigation against the Provider with respect to financial indebtedness greater than £5,000,000 (Five Million Pounds) or obligations under a service contract with a total contract value greater than £5,000,000 (Five Million Pounds) and which is reasonably likely to be adversely determined;
 - (ii) non-payment by the Provider of any financial indebtedness;
 - (iii) any financial indebtedness of the Provider becoming due as a result of an event of Default; or
 - (iv) the cancellation or suspension of any financial indebtedness in respect of the Provider,

(Each being a “Financial Distress Event”)

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

then, immediately upon notification of the Financial Distress Event (or if the DFE becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Provider), the Provider shall have the obligations and the DFE shall have the rights and remedies as set out in Paragraphs 3.3 to 3.6.

3.2 In the event of a late or non-payment of a Sub-contractor pursuant to Paragraph 3.1(e), the DFE shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Provider 10 Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the DFE's reasonable satisfaction that there is a valid reason for late or non-payment.

3.3 The Provider shall:

- (a) at the request of the DFE, meet the DFE as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the DFE may permit and notify to the Provider in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and

- (b) where the DFE reasonably believes (taking into account the discussions and any representations made under Paragraph 3.30) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:
 - (i) submit to the DFE for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the DFE may permit and notify to the in writing); and
 - (c) provide such financial information relating to the Provider as the DFE may reasonably require.
- 3.4 The DFE shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the DFE does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Provider of its reasons and the Provider shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the DFE within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by DFE or referred to the Dispute Resolution Procedure under Paragraph 3.5.
- 3.5 If the DFE considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Provider's obligations in accordance with the Contract, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 3.6 Following approval of the Financial Distress Service Continuity Plan by the DFE, the Provider shall:
- (a) on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Contract;
 - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the DFE for its approval, and the provisions of Paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
 - (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 Where the Provider reasonably believes that the relevant Financial Distress Event under Paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the DFE and the Parties may agree that the Provider shall be relieved of its obligations under Paragraph 3.6.

4. TERMINATION RIGHTS

- 4.1 The DFE shall be entitled to terminate this Contract if
- (a) the Provider fails to notify the DFE of a Financial Distress Event in accordance with Paragraph 2.4(b).
 - (b) the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or

- (c) the Provider fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6(c).

Annex 1: Rating Agencies

1.1 Graydon Insights

Annex 2: Credit Rating Levels

2 Credit Rating level - Graydon Percentage

- Graydon Insight – [REDACTED]

Annex 3: Credit Ratings and Credit Threshold

Entity	Credit rating	Credit Rating Threshold
		10% or below

SCHEDULE 5: CHANGE CONTROL PROCEDURE

1. INTRODUCTION

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

2. PRINCIPLES

- 2.1. The Department and the Provider shall conduct discussions relating to proposed changes to this Contract in good faith. Neither party shall unreasonably withhold or delay consent to the other party's proposed changes.
- 2.2. Until such time as a Change Control Notice (CCN) has been signed by both parties, the Provider shall continue to provide the Services in accordance with this Contract.
- 2.3. Any work undertaken in connection with any proposed change to this Contract by the Supplier, its Sub-Contractors or agents (other than that which has previously been agreed in accordance with the provisions of paragraph 2.2 of this Schedule 5) shall be undertaken entirely at the expense and liability of the Provider unless otherwise agreed between the Department and the Provider in advance.
- 2.4. Any discussions, negotiations or other communications which may take place between the parties in connection with any proposed change to this Contract, including but not limited to the submission of any written communications, prior to the signing by both parties of the relevant CCN, shall be without prejudice to the rights of either party.

3. PROCEDURE

- 3.1. Should either party wish to amend this Contract, that party's Contract Manager shall submit a draft CCN in the format at Annex 1 to this Schedule 5 for discussion detailing the proposed change to the other party's Contract Manager.
- 3.2. Discussion between the parties following the submission of a draft CCN shall result in either:
 - 3.2.1. no further action being taken on that draft CCN; or
 - 3.2.2. agreement between the parties on the changes to be made to Contract (including agreement on the date upon which the changes are to take effect (the "effective date")), such agreement to be expressed in the form of proposed revisions to the text of the relevant parts of this Contract.
- 3.3. Where agreement is reached in accordance with paragraph 3.2.2, the party submitting the draft CCN shall prepare the final CCN for execution by both parties. The final CCN, the content of which has been agreed between the parties in accordance with paragraph 3.2.2 of this Schedule 5, shall be uniquely identified by a sequential number allocated by the Department.
- 3.4. Two (2) copies of each CCN shall be signed by the Provider and submitted to the Department not less than ten (10) Working Days prior to the effective date agreed in accordance with paragraph 3.2.2 of this Schedule 5.
- 3.5. Subject to the agreement reached in accordance with paragraph 3.2.2 of this Schedule 5 remaining valid, the Department shall sign both copies of the approved CCN within five (5) Working Days of receipt by the Department. Following signature by the Department, one (1) copy of the signed CCN shall be returned to the Consultant by the Department.
- 3.6. A CCN signed by both parties shall constitute a valid variation or amendment to the Contract for the purposes of Clause 18.2 of the Contract.

ANNEX 1 TO SCHEDULE 5
CONTRACT CHANGE NOTE PRO FORMA

Contract Change Note for the Change Control Procedure

Jaggaer Reference No

Sequential Number: [to be allocated by the Department's Contract Manager]

Title:

Originator:for the [the Department / Provider]

Date change first proposed:

Number of pages attached:

The Department and the Provider entered into a Contract for the provision of the 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 Contract

[Party proposing change to complete]

IT IS AGREED as follows:

1. With effect from [date] it is proposed that the Contract shall be amended as set out below:
[Details of the amendments to the 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. Unless amended here, all other terms and conditions of the Contract inclusive of any previous CCNs shall remain in full force and effect.
3. This CCN properly entered in to by both parties shall fulfil the formal requirements of Clause 18.2 of this Contract.

Signed for and on behalf of the Provider

By

Name

Title

Date

Signed for and on behalf of the Department

By

Name

Title

Date

SCHEDULE 6: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Department is the Controller and the Provider is the Processor in accordance with Clause 17.a
Subject matter of the processing	The processing of the data is needed to ensure that the Processor can effectively deliver the requirements of the call off contract - to deliver subject knowledge enhancement training to members of the public.
Duration of the processing	1 October 2021 – 30 September 2025
Nature and purposes of the processing	<p>The personal data collected under the contract will be inputted into an excel spreadsheet. This will be shared with the Department securely via GalaxKey.</p> <p>The purpose of the processing of personal data includes recording the details of participants on SKE and enabling the payment of SKE providers. It also allows the Department to undertake eligibility/duplication checks against historical data.</p>
Type of Personal Data being Processed	<p>The types of personal data of participants being processed are:</p> <ul style="list-style-type: none"> • first name, • surname, • date of birth and • home postcode
Categories of Data Subject	The category of data being collected include participants on subject knowledge enhancement courses which will be made up of members of the public.

<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>The data collected will be held for seven years. After that time it will be destroyed.</p>
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SCHEDULE 7: IMPLEMENTATION PLAN
PART 1: OUTLINE IMPLEMENTATION PLAN
PART 2: DETAILED IMPLEMENTATION PLAN

Not applicable

SCHEDULE 8 : TUPE

PART A

“Initial Staff Information” means:

1. Number of staff to be transferred;
2. Gender;
3. Date of Birth;
4. Whether disabled for the purposes of the Disability Discrimination Act 1995;
5. Job description;
6. Work Location;
7. Conditioned hours of work per week;
8. Date of commencement of continuous employment and (if different) the commencement date;
9. Relevant Personnel Documentation;
10. Annual salary and rates of pay band/grade including pending increases;
11. Shifts, unsociable hours or other premium rates of pay;
12. Allowance and bonus details over the last twelve (12) Months including date, type, amount and pending allowances/bonuses;
13. Leave entitlement;
14. Any factors affecting redundancy entitlement;
15. Whether currently on maternity leave or other long term leave of absence;
16. Details of all dismissals or terminations of employment within the preceding six (6) Months of anyone previously employed to or engaged in connection with the provision of the Services;
17. Details of all agreements or arrangements (whether or not legally binding) entered into in relation to the staff with any trade union or organisation or body representing employees or with any employee representatives;
18. Details of all trade disputes and industrial action occurring at any time during the preceding twelve (12) Months to which any member of staff was a party;
19. Details of any trade union or organisation or body representing employees.

PART B

“Prescribed Particulars” means:

1. Personal Details

Gender;

Date of Birth;

Whether known to be disabled for the purposes of the Equality Act 2010, and details of any reasonable accommodation in respect thereof;

2. Employment Details

Job Title;

Staff Number;

Job Description;

Work Location;

Conditioned hours of work per week;

Date of commencement of continuous employment and (if different) commencement date;

Relevant Personnel Documentation;

Notice Periods (for employer and employee);

Annual salary and rates of pay band/grade including pending salary increases;

Shifts, unsociable hours or other premium rates of pay;

Overtime entitlement and details of last twelve (12) Months overtime;

Allowance and bonus details over the last twelve (12) Months including date, type, amount and pending allowances/bonuses;

Provisional details about standing loan/advances on salary or debts;

Existing and future training or sponsorship commitments;

Leave entitlement and accrued leave entitlement including any leave outstanding or expected to be outstanding at the Future Transfer Date;

Annual leave reckonable service date;

Additional employment benefits;

Other payments;

Copies of pay slip data for immediately preceding five (5) Months;

Provisional details of Cumulative Pay (for tax and pension purposes) and cumulative tax paid;

Tax Code;

Voluntary deductions from pay;

National insurance (NI) Number,

NI Contributions rate;

NI benefit start date;

3. Records of Employment Service

Last two appraisal report markings and/or performance assessment details and dates thereof;

Sickness and absence records for two (2) years immediately preceding (including maternity leave);

Details of any current warnings for breach of discipline or poor performances including warning reason, warning date, warning status and start and end date or penalty period.

Details of any other outstanding disputes or grievances including all proceedings before any Employment Tribunal.

4. Method of payment

Instrument of payment;

Bank/building society account details for payroll purposes.

5. Pensions

For pension purposes, the notional reckonable service date;

Pensionable pay history for preceding 3 years;

Percentage of any pay currently contributed under additional voluntary contribution arrangements;

Percentage of pay currently contributed under any added years arrangements.

PART C

“Relevant Personnel Documentation” means:

1 General Practices and Policies

Maternity, paternity and parental leave (including names of those on long-term leave or maternity leave);

Special leave and career breaks;

Sick leave and pay;

Disciplinary/grievance policy and procedures;

Equal Opportunities policy;

All documents relevant to terms and conditions of employment, including manuals, codes, handbooks, procedure guides, publications and agreements (including collective agreements);

Any other letters or documents or collective agreements affecting terms and conditions of employment;

2 Redundancy

Full details of any practice, policy or procedure which the Provider has in relation to redundancy and copies of relevant documents.

PART D

“Final Pay Details” means:

1. In respect of each Future Transferring Employee, the following information:

Final Month's copy pay slip data;

Cumulative pay for tax and pension purposes;

Cumulative tax paid;

Tax code.

SCHEDULE 9: KEY PERSONNEL AND SUB-CONTRACTORS

Key Personnel

The individuals listed in the table below are Key Personnel:

Name	Email address	Role	Period of Involvement
██████████	██████████	██████████	██████████

Key Sub-Contractors

The Provider 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 a percentage of total projected Charges over Term	Role in delivery of the Services

SCHEDULE 10: COMMERCIALLY SENSITIVE INFORMATION

This Schedule to be completed by the Provider

- 1 DFE acknowledges that the Provider has requested that the following information be treated as Commercially Sensitive Information;

Document	Page Number	Section	Condition or Paragraph Number	Explanation of harm which may result from disclosure and time period applicable to sensitivity.

- 2 DFE will consult with the Provider on any request for information, identified as Commercially Sensitive, under the FOIA.
DFE 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 Call-off Agreement.
- 4 DFE will automatically publish all information provided by the Provider not identified in this Schedule as constituting Commercially Sensitive Information provided that it satisfies the requirements of the FOIA.
- 5 DFE reserves the right to determine whether any information provided in this Schedule does constitute Commercially Sensitive Information prior to publication.

SCHEDULE 11: FINANCIAL REPORTS AND AUDIT RIGHTS

PART A

Financial Transparency Objectives and Open Book Data

1 FINANCIAL TRANSPARENCY OBJECTIVES

- 1.1 The Provider shall co-operate with the Department in order to achieve the following objectives:

Understanding the Charges

- (a) for the Department to understand any payment sought from it by the Provider including an analysis of the costs, time spent by Provider Personnel in providing the Services, number and eligibility of Participants;
- (b) for the Department to be able to understand the impact of any proposed Change on the Charges;

Agreeing the impact of Change

- (c) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Provider's Charges;
- (d) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

- (e) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (f) to enable the Department to demonstrate that it is achieving value for money for the taxpayer relative to current market prices.

2. **OPEN BOOK DATA**

- 2.1 The Provider shall keep or cause to be kept full and proper books of account in relation to the provision of the Services (including in relation to both the Charges and Bursary Payment) and the entries made therein shall be kept up-to-date at all times and shall include all such matters and things which are usually entered in books of account in the United Kingdom kept by persons or companies engaged in concerns of a similar nature in accordance with best accountancy practices.
- 2.2 Such books of account, invoices, charge out rates, time sheets, or other time recording documents kept by the Provider in connection with the provision of the Services and all vouchers, receipts, invoices, orders, contractual documentation and other documentation relating to the Services to which the Contractor is a party ("**Open Book Data**") shall be open to inspection by the Department or any persons appointed to act on the Department's behalf at any reasonable time having made prior appointment with the Provider. The Department shall be entitled to ask for a copy of the Open Book Data or any part thereof which (subject to the prior payment of the Provider's reasonable copying and administrative charges) the Provider shall provide within 10 Working Days of the Department's written request.
- 2.3 If the Department reasonably considers the Open Book Data does not accurately represent and detail sums relating to this Contract, and the Services then the Provider shall provide the Department with documentary evidence relating to such sums and contractual obligations.

- 2.4 During the Term, and for a period of 7 years following the end of the Term, the Contractor shall:
- (a) maintain and retain the Open Book Data; and
 - (b) disclose and allow the Department and/or the auditor (whether internal or external) of the Department access to the Open Book Data.

PART B

Audit Rights

1 AUDIT RIGHTS

- 1.1 The Contractor shall co-operate fully and in a timely manner with any reasonable request from time to time of the Authority or any Audit Agents and at the expense of the Contractor to provide documents, or to procure the provision of documents, relating to this Contract, and to provide, or to procure the provision of, any oral or written explanation relating to the same.
- 1.2 The Contractor shall instruct its external auditor to provide reasonable co-operation with the Audit Agents for the purposes of verifying financial information.
- 1.3 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Contractor that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

SCHEDULE 12: ORDERING PROCEDURES

1. INTRODUCTION

- 1.1. The Parties will enter into the Contract pursuant to clause 2.2.
- 1.2. This Schedule 12 specifies the procedures that the Department will follow to place an Order with the Provider Contract.
- 1.3. The Department is entitled, but not obliged, at any time during the Term to order Services. Such Services shall be provided by the Provider as Ordered Services in accordance with the provisions of the Contract.
- 1.4. Prior to any Order being issued the Department and the Provider shall undertake their requisite obligations as set out in paragraph 3.
- 1.5. In the event that the Department so decides, an Order shall be made by the Provider accepting an Order served by the Department in accordance with this Schedule 12 (Ordering Procedures).

2. PROCEDURES

- 2.1. Ordering Procedure
 - 2.1.1. Choice of Provider rests with Participants and Orders by made the Department under the Contract will reflect those preferences.
 - 2.1.2. The Provider will confirm to the Department, through the submission of SERs, as set out in paragraph 3 below, the Participants that have selected the Provider to deliver their SKE Course requirement.
 - 2.1.3. The Department shall consider the submitted SERs, as set out in paragraph 3 below and where satisfied as to their content shall confirm the same to the Provider. That confirmation shall constitute the Order in accordance with paragraph 3 of this Schedule 12 and on receipt of the confirmation the Provider shall be obliged to deliver the Services covered by the SER in accordance with the terms of the Contract.

3. ORDERS

- 3.1. On receipt of an application from a Participant, the Provider will submit an SER form to the Department. The SER may cover one or more Participants. Any requests that fall beyond the relevant SKE Academic Year will not be processed by the Department until the Recruitment Plan for the relevant SKE Academic Year has been submitted and the Purchase Order for that SKE Academic Year has been issued, in accordance with the requirements of Schedule 2 Part 1 (Price) of the Contract.
- 3.2. Upon receipt of the SER form, the Department will conduct eligibility checks for each Participant. Each eligible Participant will be recorded on the Approved Participant List. If the Provider does not have a Purchase Order in place for the SKE Academic Year, or the Participant is not eligible for funding the request will be rejected. The Department will notify the Provider of any such rejections and the reasons for them.
- 3.3. Where Purchase Order is in place, and the SER(s) submitted are valid and accepted by the Department, the Department will confirm to the Provider that the SER is accepted, and that confirmation shall constitute the Order for the Service.

- 3.4. The Provider should submit one combined SER form by the 10th calendar day of each month, detailing all participants starting SKE in that current month. Failure to record the start date of the SKE Course in the SER form will result in the form being rejected by the Department and no Order being made at that time.
- 3.5. Commencement of delivery of a SKE Course to a Participant prior to submission to and acceptance of the SER Form by the Department is wholly at the Provider's risk.
- 3.6. The Provider must submit SERs in accordance with the Department's prescribed timetable as set out in the Call-Off Contract, Schedule 2 Part 1 (Price).

Annex 1- Service Eligibility Request

This will be provided in advance of delivery.