

## **SCHEDULE 2: PART 1 – PRICING (SET UP ONLY)**

### **1 Definitions**

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

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

### **2 General**

- 2.1 The Department shall pay the Contractor the Charges as set out in Annex 2 for delivery of the Services, based on costs incurred as agreed in line with the submitted Pricing Schedule, subject to satisfying the Department's payment conditions for the delivery of services.
- 2.2 The Department shall pay the Contractor the Charges in arrears for costs relating to the Services in line with the costs submitted in the Pricing Schedule and satisfactorily meeting the Milestones, Service Levels and Performance Management, as set out in Part 2 of this Schedule 2 (Performance)..
- 2.3 The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise in writing between the Contractor and the Department, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
- 2.4 Indexation shall not apply to the Charges.
- 2.5 Invoices shall be submitted on or before the 25th day of each month following the month in respect to which the invoice relates. The first invoice shall be submitted by the 25 of June 2021. The Contractor must provide supporting evidence that the milestone has been completed. The data provided will be validated and verified by the Department.
- 2.6 At any time during the Contract Period (including, for the avoidance of doubt, at any time before and/or after payment by the Department to the Contractor) the Department shall be entitled to validate any claim for payment made by the Contractor. At all times the Contractor shall provide all necessary assistance as requested by the Department to enable the Department to validate any claim for payment made by the Contractor.

### **3 Charges on Teachers**

- 3.1 Neither the Contractor nor its agents or Sub-Contractors shall levy any charge on Teachers in respect of Set Up and mobilisation costs.

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

- 4.1 Neither the Contractor nor its agents or Sub-Contractors shall levy any charge on schools in respect of Set Up and mobilisation costs.

### **5 Recovery of Sums Due**

- 5.1 Whenever under the Contract any sum of money is recoverable from the Contractor, or payable by the Contractor (including any sum which the Contractor is liable to pay to the Department in respect of any breach of the Contract), the Department may unilaterally deduct the sum from any sum due, or which at any later time may become any other agreement or contract with the Department.
- 5.2 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.
- 5.3 The Contractor shall make any payments due to the Department without any deductions whether by way of offset, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Department to the Contractor.
- 5.4 If the Contractor does not meet Milestones included in their Set Up Call Off Contract, the Department reserves the right to recover any Set Up Costs paid under this Call Off Contract. The agreed sum of Set Up Costs will be recovered via a credit note submitted by the Contractor to the Department.

## **6 Disputed Claims**

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

## **7 Financial Reporting and Audit**

- 7.1 The Contractor shall keep or cause to be kept full and proper books of account in relation to the provision of the Services, and the entries made therein, shall be kept up- to-date at all times and shall include all such matters and things which are usually entered in books of account in the United Kingdom kept by persons or companies engaged in concerns of a similar nature in accordance with best accountancy practices.
- 7.2 Such books of account, invoices, charge out rates, time sheets, or other time recording documents kept by the Contractor in connection with the provision of the Services and all receipts, invoices, orders, contractual documentation and other documentation relating to the Services to which the Supplier is a party ("**Open Book Data**") shall be open to inspection by the Department or any persons appointed to act on the Department's behalf at any reasonable time having made prior appointment with the Contractor. The Department shall be entitled to ask for a copy of the Open Book Data or any part thereof which (subject to the prior payment of the Contractor's reasonable copying and administrative charges) the Contractor shall provide within 10 Workings Days of the Department's written request.

- 7.3 If the Department reasonably considers the Open Book Data does not accurately represent and detail sums relating to this Agreement and the Services, then the Supplier shall provide the Department with documentary evidence relating to such sums and contractual obligations.
- 7.4 During the Term, and for a period of 7 years following the end of the Term, the Contractor shall:
- 7.4.1 maintain and retain the Open Book Data; and
  - 7.4.2 disclose and allow the Department and/or the auditor (whether internal or external) of the Department access to the Open Book Data.
- 7.5 The Contractor shall co-operate fully and in a timely manner with any reasonable request from time to time of the Department or any Audit Agents and at the expense of the Contractor to provide documents, or to procure the provision of documents, relating to this Contract, and to provide, or to procure the provision of, any oral or written explanation relating to the same.
- 7.6 The Contractor shall instruct its external auditor to provide reasonable co-operation with the Audit Agents for the purposes of verifying financial information.
- 7.7 The Department shall during each audit comply with those security, sites, systems and facilities operating procedures of the Contractor that the Department deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

**ANNEX 1 TO SCHEDULE 2: PART 1 – PAYMENT PROCESS (SET UP ONLY) NOT  
USED FOR DELIVERY**

NOT USED

## **SCHEDULE 2: PART 1 – PRICING (DELIVERY)**

### **1. Definitions**

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

<b>“Charges”</b>	means the fees payable by the Department for the performance of the Services by the Contractor as set out in Tables 1-6.
<b>“Output”</b>	means the successful completion of specific deliverables per Teacher or per case study.
<b>“Output Payment”</b>	means the price the Department will pay the Contractor per Output achieved in accordance with paragraph 12.1.
<b>“Paragraph”</b>	means a paragraph of this Schedule 2: Part 1 unless expressly indicated to the contrary.
<b>“Price Per Teacher”</b>	means the price set per Teacher for each NPQ and NPQH Additional Support Offer in the Pricing Schedule.
<b>“Pricing Schedule”</b>	means the pricing breakdown submitted by the Contractor with their Quotation for this Call Off Contract.
<b>“Service Fee”</b>	means a monthly fee paid per NPQ with effect from the following month after the Cohort Commencement Date calculated in accordance with paragraph 11.2 and 11.3 of section 11.
<b>“Total Contract Value”</b>	means the total value of the Services to be delivered under this Call Off Contract. The Total Contract Value is stated in the table at Annex 2 and detailed in the Contractors Pricing Schedule included at Annex 2.
<b>“TRN”</b>	means Teacher Reference Number.

### **2. General**

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

### **3. Charges to Teachers**

- 3.1. Neither the Contractor nor its Agents or Sub-Contractors shall levy any charge on Teachers except as expressly permitted in advance and in writing by the Department (at its sole discretion).
4. **Charges to Schools (School Contribution)**
- 4.1. Neither the Contractor nor its Agents or Sub-Contractors shall levy any charge on a School except where expressly agreed in advance and in writing by the Department (at its sole discretion). For the avoidance of doubt, Schools can be charged under a Part B (School Funded NPQ) Call Off Contract that they place an Order for.
5. **Recovery of Sums Due**
- 5.1. Whenever under the Contract any sum of money is recoverable from the Contractor, or payable by the Contractor (including any sum which the Contractor is liable to pay to the Department in respect of any breach of the Contract), the Department may set off the sum from any sum due, or which at any later time may become any other agreement or contract with the Department or the Crown.
- 5.2. 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.
- 5.3. The Contractor shall make any payments due to the Department without any deductions whether by way of offset, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by Department to the Contractor.
- 5.4. All payments due shall be made within a 28 days once agreed between the parties that a sum of money is recoverable, unless otherwise specified in the Contract, in cleared funds, to such bank or building society as the recipient Party may from time to time direct.
- 5.5. If the Contractor does not meet Milestones included in their Set Up Call Off Contract, the Department reserves the right to recover any Set Up Costs they have been paid under this Call Off Contract. The agreed sum of Set Up Costs will be recovered via a credit note submitted by the Contractor to the Department.
6. **Disputed Claims**
- 6.1. Notwithstanding paragraph 2.6 of this Schedule 2, payment by the Department of all or any part of any Charges rendered or other claim for payment by the Contractor shall not signify approval. The Department reserves the right to verify Charges after the date of payment and subsequently to recover any sums, which have been overpaid.
- 6.2. If any part of a claim rendered by the Contractor is disputed or subject to question by the Department either before or after payment then, upon request, the Contractor shall provide such further documentary and oral evidence as the Department may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Contractor shall promptly provide such evidence in a form satisfactory to the Department.
- 6.3. If any part of a claim rendered by the Contractor is disputed or subject to question by the Department, the Department shall not withhold payment of the remainder.
- 6.4. If any fee rendered by the Contractor is paid but any part of it is disputed or subject to question by the Department and such part is subsequently agreed or determined not to have been properly payable then the Contractor shall forthwith repay such part to the Department.
- 6.5. The Department shall be entitled to deduct from sums due to the Contractor by way of offset any amounts owed to it or which are in dispute or subject to question either in respect of the fee for which payment is being made or any previous fee.
7. **Adjustment of the Charges**
- 7.1. The Charges may only be varied by means of a Contract Change Notice, and in accordance with the provisions of this Contract.

- 7.2. The Department reserves the right to adjust the monthly Service Fee in the following circumstances:
- 7.2.1. If the staffing headcount profile of the Contractor is less than 75% of what was specified in the Pricing Schedule by December 2021 when the Contractor submits their first bi-annual FTE profile as per paragraph 8.5.
- 7.2.2. If the Contractor fails to recruit at least 50% of the Minimum Delivery Target.
- 7.3. In the circumstances set out in paragraphs 7.2.1 and 7.2.2, if the Department decides to adjust the monthly Service Fee due to a negative impact on the quality of services delivered and/or the number of Teachers recruited, the Department will use Open Book Data to validate the actual costs incurred by the Contractor and adjust the Charges accordingly via a Contract Change Notice.
8. **Financial Reporting and Audit**
- 8.1. The Contractor shall keep or cause to be kept full and proper books of account in relation to the provision of the Services, and the entries made therein, shall be kept up-to-date at all times and shall include all such matters and things which are usually entered in books of account in the United Kingdom kept by persons or companies engaged in concerns of a similar nature in accordance with best accountancy practices.
- 8.2. Such books of account, invoices, charge out rates, time sheets, or other time recording documents kept by the Contractor in connection with the provision of the Services and all receipts, invoices, orders, contractual documentation and other documentation relating to the Services to which the Supplier is a party ("**Open Book Data**") shall be open to inspection by the Department or any persons appointed to act on the Department's behalf at any reasonable time having made prior appointment with the Contractor. The Department shall be entitled to ask for a copy of the Open Book Data or any part thereof which (subject to the prior payment of the Contractor's reasonable copying and administrative charges) the Contractor shall provide within 10 Workings Days of the Department's written request.
- 8.3. If the Department reasonably considers the Open Book Data does not accurately represent and detail sums relating to this Agreement and the Services, then the Contractor shall provide the Department with documentary evidence relating to such sums and contractual obligations.
- 8.4. During the Contract Period, and for a period of 7 years following the end of the Contract Period, the Contractor shall:
- (a) maintain and retain the Open Book Data; and
  - (b) disclose and allow the Department and/or the auditor (whether internal or external) of the Department access to the Open Book Data.
- 8.5. The Contractor shall provide, during the Contract Period, bi-annual updates to the Cohort Pricing Schedule that compares the forecast to the actual costs incurred. The Contractor will also supply a bi-annual profile of deployed FTE for the Cohort duration, which is updated for actuals every month and submitted to the Department. The first bi-annual update will be required at the end of December 2021 and then at 6 months intervals after that point.
- 8.6. The Contractor shall co-operate fully and in a timely manner with any reasonable request from time to time of the Department or any Audit Agents and at the expense of the Contractor to provide documents, or to procure the provision of documents, relating to this Contract, and to provide, or to procure the provision of, any oral or written explanation relating to the same.
- 8.7. The Contractor shall instruct its external auditor to provide reasonable co-operation with the Audit Agents for the purposes of verifying financial information.
- 8.8. The Department shall during each audit comply with those security, sites, systems and facilities operating procedures of the Contractor that the Department deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

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

### **9. General**

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

9.1.1. The Service Fee;

9.1.2. The Output Payments, consisting of;

- (a) Teacher Validated and Commenced Training
- (b) Teacher Retention Payments
- (c) Teacher Assessed, Mark Awarded and Moderated
- (d) Teacher Confirmed as Eligible for Support Offer and Support Commenced
- (e) Teacher Completed Support Offer
- (f) Case Study Developed and Verified by the Department.

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

### **10. Price Per Teacher**

10.1. The Contractor shall provide the Services in accordance with the Price Per Teacher list in Table 1.

<b>Table 1a - Price Per Teacher</b>	
<b>NPQ Qualification/ NPQH Additional Support Offer</b>	<b>Price Per Teacher</b>
NPQ Leading Teacher Development (NPQLTD)	
NPQ for Leading Teaching (NPQLT)	
NPQ for Leading Behaviour and Culture (NPQLBC)	
NPQ for Senior Leadership (NPQSL)	
NPQ for Headship (NPQH)	
NPQ for Executive Leadership (NPQEL)	
NPQH Additional Support Offer	

### **11. Service Fee**

11.1. Subject to the terms of the Contract, the Department shall pay the Contractor a monthly Service Fee per NPQ, with effect from November 2021, on the basis set out in paragraphs 11.2 and 11.3 for a period of up to 30 months depending on qualification length and Cohort timing.

11.2. 40% of the Price Per Teacher for each NPQ equals the Service Fee per Teacher. The Service Fee per Teacher is multiplied by the corresponding Teacher recruitment target per qualification to generate the total Service Fee sum for each qualification in Table 2 below.

11.3. The total Service Fee sum for each qualification is divided by the minimum number of months required to deliver each qualification over two Cohorts to generate the applicable monthly Service Fee, as set out in Table 2 below.



Table 2 – Targets and Service Fee (£)					
Qualification	Service Fee Per Teacher	Recruitment Target	Total Service Fee Sum (£)	Number of Monthly Service Fee Payments (commencing the following month after the first Cohort Commencement Date)	Monthly Service Fee
NPQ for Leading Teacher Development	■	■	■	18	■
NPQ for Leading Teaching	■	■	■	18	■
NPQ for Leading Behaviour and Culture	■	■	■	18	■
NPQ for Senior Leadership	■	■	■	24	■
NPQ for Headship	■	■	■	30	■
NPQ for Executive Leadership	■	■	■	24	■
NPQH Additional Support Offer	N/A	■	N/A	N/A	N/A

11.4. The monthly Service Fee for each NPQ will be paid in equal instalments from the following month after the Cohort Commencement Date up until to the minimum end date of delivery for two Cohorts for each NPQ, as set out in Annex 2 of this Schedule (Contract Pricing Information). The Service Fee does not apply to the NPQH Additional Support Offer or case study development.

11.5. The first invoice will be submitted on or before the 25th of the following month after the Cohort Commencement Date.

## 12. Output Based Performance Payments

12.1. Subject to the terms of the Contract, the Department shall pay the Contractor the applicable Output Payment for each Output that is achieved in accordance with the requirements of the Contract. The applicable Output Payment shall be ascertained by reference to Table 3, Table 4, Table 5 and Table 6 below.

12.2. The Department will conduct a full reconciliation and validation of Output Payments once every financial year to ensure that Contractor's have not been overpaid or underpaid for Outputs completed. The first reconciliation will take place in March 2022, the second reconciliation in March 2023, the third reconciliation in March 2024 and the final reconciliation in March 2025.

### Output Payments for NPQs and NPQH Additional Support Offer

12.3. In order to trigger payment for Output 1 (Teacher Validated and Commenced Training) for the Specialist and Leadership NPQs, each Teacher must have been confirmed as eligible for funding, been validated by the Department and been confirmed by the Contractor as having commenced on

the programme by 25th November 2021 in respect of Cohort 1 and by 25th February 2022 in respect of Cohort 2. If a Teacher that was signed up to Cohort 1 or Cohort 2, withdraws before commencing the programme, the Contractor may replace them with another Teacher by 25th November 2021 for Cohort 1 and by 25th February 2022 for Cohort 2.

- 12.4. In order to trigger payment for Output 1 (Teacher Confirmed as Eligible for Support Offer and Support Commenced) for the NPQH Additional Support Offer, each Teacher must have been confirmed as eligible for funding, (i.e. in their first 2 years of headship and either commencing an NPQH from the academic year starting November 2021 or have passed a reformed NPQH) been validated by the Department and been confirmed by the Contractor as having commenced their NPQH Additional Support Offer. This will be by the 25<sup>th</sup> of the month following the Teacher commencing their NPQH Additional Support Offer if their support lasts for one academic year. For all other durations of the NPQH Additional Support Offer this will be determined by the length of the NPQH Additional Support Offer, with Output Payments made on a quarterly basis as set out in Table 5.
- 12.5. In order to trigger payment for Output Retention Points (Output 2 only for Specialist NPQs and Output 2 and 3 for Leadership NPQs and the NPQH Additional Support Offer), the Teacher must be enrolled on the training or support offer until the review point specified in Table 3 for Specialist NPQs, Table 4 for Leadership NPQs and Table 5 for the NPQH Additional Support Offer.
- 12.6. If a Teacher withdraws from their NPQ or NPQH Additional Support Offer in between two review points, an Output Payment will be paid for the full period between the two review points but no further Output Payments will be made past that point as the Contractor is no longer delivering to that Teacher. For demonstration purposes, if the Teacher withdrew between Output 1 and Output 2, a payment would be made for Output 2 but no more Output Payments will be made past Output 2. For the avoidance of doubt, the same will apply to any 2 consecutive Output review points. If a Teacher withdraws from their NPQ this will not reduce the Service Fee payable for each qualification.
- 12.7. If a Teacher defers completing their qualification due to going on maternity leave, sabbatical leave, working part-time or due to illness between review points, an Output Payment will be paid if the deferral has occurred within one calendar month of the next review point. If a Teacher defers more than one calendar month before the next review point, an Output Payment will not be paid. If a Teacher wishes to recommence their NPQ or NPQH Additional Support Offer and can complete their NPQ or NPQH Additional Support Offer following deferral and before the call off contract expiry date, agreement must be reached between the Contractor and the Department on a future payment Schedule via a contract Variation. In all other cases, the Contractor will need to agree a revised Schedule for remaining Output Payments with the Department, under a separate Call Off Contract. In the event that a future Call Off Contract is not awarded, the Contractor must make reasonable endeavours before the contract has ended to ensure the Teacher is transferred to another Framework contractor (supported by the Department) who will be in a position to allow the Teacher to complete their NPQ or NPQH Additional Support Offer.
- 12.8. In the event the Contractor agrees to take on a Teacher who has transferred from another Framework Contractor (at whatever stage of their NPQ or NPQH Additional Support Offer), the Contractor will need to agree a revised payment Schedule under a Variation.
- 12.9. In order to trigger payment for Output 3 for Specialist NPQs or Output 4 for Leadership NPQs (Teacher Assessed, Mark Awarded and Moderated), each Teacher must have completed their programme, had their work assessed and have been awarded either a pass or fail mark and the mark moderated by the QA Agent.
- 12.10. In order to trigger payment for Output 4 (Teacher Completed Support Offer) for the NPQH Additional Support Offer, the Teacher must have completed their NPQH Additional Support Offer.
- 12.11. All claims for payment of Output Payments must be supported by accurate Management Information. The Department will validate the following Management Information prior to approving Output Payments:

- 12.11.1. the current six digit URN, School name and a point of contact mail address;
- 12.11.2. the NPQ being studied or NPQH Additional Support Offer undertaken for each Teacher, the Teacher's funding status (funded/self-funded), TRN, name and Date of Birth of each Teacher being claimed for;
- 12.11.3. the dates relevant to each Teacher who is undertaking a qualification or NPQH Additional Support Offer including:
  - 12.11.3.1. Start date and confirmation of their continued active involvement on their programme; and
  - 12.11.3.2. Length of NPQ or NPQH Additional Support Offer; and
  - 12.11.3.3. the date and reason for withdrawal/deferral (where applicable) against the Schedule of the NPQ or NPQH Additional Support Offer and/or date of recommencement on to the programme in the case of deferrals only; and
  - 12.11.3.4. The date that the Teacher's Summative Assessment was submitted if applicable; and
  - 12.11.3.5. date of completion of the programme; and
- 12.11.4. the qualification outcome achieved by the Teacher if applicable

Full details on the Management Information requirements are set out in part 5 of Section 2B of the Specification.

- 12.12. Providers must ensure they have appropriate policies and procedures in place to ensure data outlined in clauses 12.12 is collected in full and quality assured before it is submitted to the Department. If an MI return is not accurate, and when the Department validates and verifies the data provided it emerges that Output Payments have been made for Teachers who did not start or remain on the training, the Department will recover the payments in accordance with paragraph 5 of this Part of the Schedule.
- 12.13. Where the data provided for any Teacher cannot be validated no Output Payments will be made and the Teacher will not count towards recruitment targets.
- 12.14. In the event the Department agrees to the Contractor recruiting in excess of the Recruitment Targets set out in Table 2 or the Contractor takes on a Teacher who transferred their training from another Framework Contractor as per 12.7 and 12.8, the Service Fee is adjusted for NPQs only and the Output Prices are paid at the respective Price Per Teacher Output Prices for NPQs and the NPQH Additional Support Offer.
- 12.15. In the event the Department agrees to the Contractor recruiting in excess of the Recruitment Targets set out in Table 2 or the Contractor takes on a Teacher who transferred their training from another Framework Contractor as per 12.15 and 12.16, the Output Prices are paid at the respective Output Prices per milestone achieved.

#### **Output Payments for Additional Case Study Development**

- 12.16. The Department will pay Output Payments at the price per case study in Table 6 once the case studies have been developed and approved by the Department. The number of case studies to be developed and the total value of all case studies can be found in Annex A of this Schedule.
- 12.17. The Contractor may not invoice for a case study until the Department has given its approval of the content which will be within one month of receiving the case study. If a case study is not approved by the Department, the Contractor may still invoice and be paid for case studies that have been approved in the meantime. The Department and Contractor will agree if and when the case study that has not been approved is to be resubmitted, which shall be no later than one month after the original rejection date.

### **13. Output Prices for NPQs and NPQH Additional Support Offer**



- 13.1. Payment will be made based upon the successful delivery of each individual Output as set out in Tables 3, 4 and 5 below during the Contract:



Table 3 - Output Price and Payment Schedule for NPQ for Leading Teaching, NPQ for Leading Teacher Development and NPQ for Leading Behaviour and Culture							
Output Payments	Percentage of Price Per Teacher	Cohort 1			Cohort 2		
		Review Point	Payment Made	Output Payment per teacher	Review Point	Payment Made	Output Payment per teacher
Output 1 - Teacher Validated and Training Commenced	20%	25 December 2021	On or after 25 January 2021 subject to successful validation of Teacher	<div>■■■■ per NPQLTD</div> <div>■■■■ per NPQLBC</div> <div>■■■■ per NPQLT</div>	25 February 2022	On or after 25 March 2022 subject to successful validation of Teacher	<div>■■■■ per NPQLTD</div> <div>■■■■ per NPQLBC</div> <div>■■■■ per NPQLT</div>
Output 2 – Retention Point	20%	25 June 2022	On or after 25 July 2022	<div>■■■■ per NPQLTD</div> <div>■■■■ per NPQLBC</div> <div>■■■■ per NPQLT</div>	25 September 2022	On or after 25 October 22	<div>■■■■ per NPQLTD</div> <div>■■■■ per NPQLBC</div> <div>■■■■ per NPQLT</div>
Output 3 – Teacher Assessed, Mark Awarded and Moderated	20%	On or after 25 December 2022	On or after 25 January 2022	<div>■■■■ per NPQLTD</div> <div>■■■■ per NPQLBC</div> <div>■■■■ per NPQLT</div>	On or after 25 February 2023	On or after 25 March 2023	<div>■■■■ per NPQLTD</div> <div>■■■■ per NPQLBC</div> <div>■■■■ per NPQLT</div>

Table 4 - Output Price and Payment Schedule for NPQ Senior Leadership, NPQ Headship and NPQ Executive Leadership							
Output	Percentage of Price Per Teacher	Cohort 1			Cohort 2		
		Review Point	Payment Made	Output Payment per teacher	Review Point	Payment Made	Output Payment per teacher

<b>Output 1 - Teacher Validated and Training Commenced</b>	15%	25 December 2021	On or after 25 January 2021 subject to successful validation of Teacher	[REDACTED] per NPQSL [REDACTED] per NPQH [REDACTED] per NPQEL	25 February 2022	On or after 25 March 2022 subject to successful validation of Teacher	[REDACTED] per NPQSL [REDACTED] per NPQH [REDACTED] per NPQEL
<b>Output 2 – Retention Point</b>	15%	25 June 2022	On or after 25 July 2022	[REDACTED] per NPQSL [REDACTED] per NPQH [REDACTED] per NPQEL	25 September 2022	On or after 25 October 22	[REDACTED] per NPQSL [REDACTED] per NPQH [REDACTED] per NPQEL
<b>Output 3 – Retention Point</b>	15%	25 November 2022	On or after 25 December 2022	[REDACTED] per NPQSL [REDACTED] per NPQH [REDACTED] per NPQEL	25 April 2023	On or after 25 May 2023	[REDACTED] per NPQSL [REDACTED] per NPQH [REDACTED] per NPQEL
<b>Output 4 – Teacher Assessed, Mark Awarded and Moderated</b>	15%	On or after 25 June 2023	On or after 25 July 2023	[REDACTED] per NPQSL [REDACTED] per NPQH [REDACTED] per NPQEL	On or after 25 September 2023	On or after 25 October 2023	[REDACTED] per NPQSL [REDACTED] per NPQH [REDACTED] per NPQEL

<b>Table 5 - Output Price and Payment Schedule for NPQH Additional Support Offer</b>			
<b>Output</b>	<b>Review Point</b>	<b>Output Payment made</b>	<b>Output Payment</b>
<b>Output 1 – Teacher Confirmed as Eligible for Support Offer and Support Commenced</b>	<b>One month prior to the end of the first quarter</b>	On or after one month following Milestone Date subject to successful validation of Teacher	[REDACTED] (ex VAT)
<b>Output 2 – Retention Point</b>	<b>One month prior to the end of the second quarter</b>	On or after one month following Milestone Date	[REDACTED] (ex VAT)



<b>Output 3 – Retention Point</b>	<b>One month prior to the end of the third quarter</b>	On or after one month following Milestone Date	 (ex VAT)
<b>Output 4 – Teacher Completed Support Offer</b>	<b>One month prior to the end of the fourth quarter</b>	On or after one month following Milestone Date	 (ex VAT)

**14. Output Prices for Case Study Development – Not used**

**15. 14.1 Pricing of Variations**

- 15.1. The provisions of this paragraph 15 shall apply to the pricing of any Variation (or proposed Variation) and the calculation of any change to the Charges consequent upon a Variation (or proposed Variation).
- 15.2. The Parties acknowledge that a Variation or proposed Variation may have an impact on the Charges in one or more of the following ways:
- 15.2.1. One-off cost, in which case paragraph 15.5 shall apply;
- 15.2.2. Subject to the Contractor's obligation to mitigate increases in the Charges, a Process Variation may result in an amendment to the Charges, in which case paragraph 15.6 shall apply;
- 15.2.3. The cost of any up-front investment by the Contractor in order to achieve a Variation as set out in paragraph 15.2.2, in which case paragraph 15.12 shall apply.
- 15.3. In any of the cases referred to in paragraphs 15.2.1 to 15.2.3 above, and without prejudice to paragraph 15, the Contractor shall use the Pricing Schedule provided by the Department to demonstrate and justify any claim for additional or reduced Charges arising as a result of any proposed Variation.
- 15.4. Where a Variation is requested by either Party under the Change Control Procedure then, subject to the terms of the Change Control Procedure, the Contractor shall at its own cost prepare, populate and submit for the Department's approval a specific version of the Pricing Schedule demonstrating the impact of the proposed Variation which shall:
- 15.4.1. Be based on and reflect the principles of the Pricing Schedule, having regard to any assumptions stated in the Pricing Schedule which affect the Charges;
- 15.4.2. Include estimated volumes of each type of resource to be employed and the applicable average annual salary for resource employed specified in the Pricing Schedule;
- 15.4.3. Include full disclosure of any assumptions underlying such a quotation. The Department reserves the right to request further clarity around these assumptions and the underlying calculations until it is satisfied as to their validity; and
- 15.4.4. Include evidence of the cost of any assets required for the Variation.
- 15.5. Where paragraph 15.2.1 applies:
- 15.5.1. The Contractor shall be paid in full upon completion, or by an agreed Schedule of milestone payments (both payment options subject to meeting specified acceptance criteria agreed at the outset).
- 15.5.2. The Department shall issue a separate purchase order and the Contractor shall raise a separate invoice or credit note in respect of the one-off cost.
- 15.6. Where paragraph 15.2.2 applies:

- 15.6.1. Any necessary changes to the Charges shall be affected by means of changes to the relevant Price Per Teacher, Service Fee and/or Output Payments set out in Tables 1-6 of this Schedule; and
- 15.6.2. Any necessary changes to the Charges will be in accordance with the original requirements for the completion of the Pricing Schedule as set out in the Invitation to Tender, for example the maximum cap on Service Fee will still apply.
- 15.7. The Charges shall not be adjusted more than on a bi-annual basis. The date any Charges adjustment ("Price Adjustment Effective Date") takes effect shall be at the start of the six month period immediately following implementation of the Variation in question. For example, where a Process Variation is implemented during the month of September in a Contract Year; the relevant Charges shall be adjusted with effect from 1 January in that Contract Year. If there are several adjustments in one six month period, these will be aggregated to make one adjustment at the start of the next six month period.
- 15.8. The Department shall provide the Contractor with a revised copy of the relevant Tables of this Schedule by the date any such Variation takes effect (1 January, 1 April, 1 July, 1 October).
- 15.9. A Process Variation shall be implemented timeously, and such implementation shall not await the Price Adjustment Effective Date.
- 15.10. If a Process Variation is implemented and there is a demonstrable financial loss to a Party due to the relevant Charges not being adjusted until the Price Adjustment Effective Date (first day of next quarter), then the Party impacted in this way can seek recovery of the amount due in the following manner:
  - 15.10.1. if it is the Contractor, by submitting a separate invoice and supporting documentation; or
  - 15.10.2. if it is the Department, by issuing a credit note request and supporting documentation.
- 15.11. Any request to seek recovery of such an amount must be submitted within 3 (three) months of the Price Adjustment Effective Date.
- 15.12. Where paragraph 15.2.3 applies, the Process Variation element shall be dealt with in accordance with paragraph 15.6 above and any up-front investment required to implement such a Process Variation shall itself be dealt with through an adjustment to the relevant Charges under paragraph 15.6 above or treated as a one-off cost in accordance with paragraph 15.5 above.
- 15.13. Following implementation of a Variation, the Department shall make any necessary consequential changes and/or updates to Table 1-7 of this Schedule 2: Part 1.



## ANNEX 2 TO SCHEDULE 2: PART 1 – CONTRACT PRICING INFORMATION

### 1. General

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

Total Contract Value	Service Fee (total)	Output Based Performance Payments (total)

- 1.1.1 The Output Based Performance Payments value is the maximum amount payable and actual payments are subject to successful achievement of the performance milestones in paragraphs 6 of Schedule 2: Part 1.

- 1.2 The Total Contract Value is broken down as follows per qualification:

NPQ Qualification / NPQH Additional Support Offer	Recruitment Target	Total £ per NPQ Qualification/ NPQH Additional Support Offer (Recruitment Target multiplied by Price Per Teacher)	Service Fee				Total Output Based Performance Payments
			Total Service Fee	Number of Monthly Payments	Months Receivable	Monthly Service Fee Payment	
NPQ for Leading Teaching NPQ				18	November 2021 -April 2023*		
NPQ for Leading Behaviour and Culture				18	November 2021 -April 2023*		
NPQ for Leading Teacher Development				18	November 2021 -April 2023*		
NPQ for Senior Leadership				24	November 2021 - October 2023*		
NPQ for Headship				30	November 2021 -April 2024*		
NPQ for Executive Leadership				24	November 2021 - October 2023*		



NPQH Additional Support Offer			N/A	N/A	N/A	N/A	
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\*Call Off Contract specific dates will be input on award.

## SCHEDULE 2: PART 2 – PERFORMANCE

*Drafting note: this Schedule references dates, targets, and milestones relative to the 2021 Cohort. For all subsequent cohort Call Offs this Schedule will be updated to reflect the relevant Cohort specifics as set out in the Call Off Order.*

In this section the words below have the following meaning:

<b>“Department Reporting Template”</b>	means the Department’s spreadsheet that will be shared with Contractors post award which will need to be submitted by the 25 <sup>th</sup> of each month detailing the Schools and Participants recruited onto the programme.
<b>“Improvement Plan”</b>	means a plan for improvement that the Department can request from the Contractor within ten (10) Working Days in the event of failure.
<b>“KPI”</b>	means the Key Performance Indicators as set out in Annex A of this Schedule.
<b>“Performance Management”</b>	means how the Department will measure the Contractor’s performance and progress against the Service Specification (Schedule 1: Part 1), the Contractors Solution (Schedule 1: Part 2), the Implementation Plan (Schedule 7), and Pricing (Annex 1 of Schedule 2: Part 1).
<b>“Performance Manager”</b>	means the person the Contractor will appoint to ensure that the Contract is delivered as specified in the Contract and that Service Levels, Minimum Targets and KPIs are achieved.
<b>“Reporting Period”</b>	means the reporting period that occurs every calendar month from 25 <sup>th</sup> of each month to the 24 <sup>th</sup> of the following month and will commence on the Contract Commencement Date.
<b>“Service Credits”</b>	means the service credits as set out in table 3 of this Schedule.
<b>“Service Level”</b>	means the Service Levels as set out in Table 1 of this Schedule by which the Contractor’s performance will be measured.

### 1 SERVICE LEVELS AND KPIS

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

#### Service Levels

- 1.3 The Contractor shall ensure compliance with the Service Levels listed in Table 1 (Service Levels).
- 1.4 The Contractor and the Department shall monitor the Contractor's performance against each of the Service Levels listed in Table 1 (Service Levels).

- 1.5 The Contractor shall complete and return the monthly Department Reporting Template outlining performance against the Service Levels to date and confirm whether they have been achieved.
- 1.6 If the Contractor fails to meet any one Service Level in any Reporting Period, the Department reserves the right to take action in line with paragraphs 2.11 to 2.15 (Consequence of Service Failure).
- 1.7 Service Levels are set out in Table 1 below:

Table 1 Service Levels			
Subject	Ref	Service Level	Level to be Achieved
	RM1	Submit to the Department a completed monthly contract management report by the twenty-fifth (25th) of each month using the template provided by the Department.	Submit 100% of monthly contract reports to the Department by 25th of each month.
	RM2	Attend monthly contract management meetings.	100% excluding unavoidable events which prevent attendance.
Reporting and Meetings	RM3	Attend any ad hoc development and operational meetings as required by the Department	Ad-hoc. A minimum 10 working days notice will be provided to the supplier requesting their attendance to a meeting.
	RM4	Attend annual review meetings. At least 7 days prior to the meeting a summary report should be submitted to the Department for review that outlines progress against all key milestones set out in this schedule.	Annual. Times and dates to be agreed by both parties in advance of meetings being set.
	RM5	Engage with Department facilitated opportunities for strategic framework collaboration, including attending scheduled events, identifying opportunities for collaboration, and progressing actions in line with agreed timescales.	Ad-hoc. A minimum 20 working days notice will be provided.
Administration / Communication	C1	Provide a meaningful response to one hundred per cent (100%) of queries raised by the Department or Service Users and correspondence within three (3) Working Days from the date of receipt or within such other timescales for response as provided specifically for within the terms of the contract. In the event the query raised is complex the Contractor can request an extension of time, which will be subject to agreement by the Department.	100% of responses submitted within three Working Days.
Management Information	MI1	Submit accurate and complete data on Teacher and School participation to the Department by the twenty-fifth (25th) of each month. Ensure the data submitted to the Department on this date is reflective of the number of teachers recruited onto the programme at that point in time.	100% of required monthly management information submitted by the 25 <sup>th</sup> of each month.
	MI2	Ensure that all data discrepancies identified by the Department including any missing data or inaccurate data preventing teacher validation are	Resolve 100% of discrepancies by next reporting deadline

		100% accurately addressed ahead of the next submission of data.	following notification from the Department.
Finance	F1	Ensure that valid invoices are submitted to the Department by the twenty-fifth (25th) of the month for the relevant Reporting Period.	100% of invoices to be submitted by 25 <sup>th</sup> of the month for the relevant Reporting Period
	F2	Comply and respond to any requests for Open Book or financial validation data within ten (10) Working Days.	100% of responses made to requests for Open book or financial validation data made within 10 Working Days.
	F3	Ensure that all financial discrepancies identified by the Department are 100% accurately reconciled ahead of the next invoice period and any variances to invoicing values offset.	100% of financial discrepancies accurately reconciled and invoicing values offset by the next Reporting Period deadline following identification or notification of the discrepancy.
Appeals	APP 1	Delivery of an internal process to resolve appeals within three (3) months from the date submitted by the appellant.	100% of the internal processes as defined in the Contractors Appeals Policy to be undertaken within the three (3) month appeal window.
	APP 2	If unresolved within three (3) months from the date submitted by the appellant and all internal processes exhausted, a complete appeal bundle is to be sent to the Department and/or its designated External Body who will act as the final arbiter.	Refer 100% of unresolved appeals for arbitration on expiration of the three (3) month appeal window.
Records and questionnaires	RQ1	All satisfaction questionnaires shall be completed in full and returned to the Department within ten (10) Working Days from the date of completion, and any information requested by the Department shall be provided by the Contractor to the Department within five (5) Working Days from the date of the request.	95% of satisfaction questionnaires to be returned within 10 Working Days from the date of completion and submit 100% of information requested by the department within 5 Working Days.
Design and delivery	D1	Design and delivery of training programmes against the published NPQ Content Frameworks and the Service Requirements set out in the contract.	Meet 100% of Milestone Dates
	D2	Design and delivery of training programmes against dates and milestones agreed in the Framework Implementation Plan and Call Off Delivery Plans.	Meet 100% of Milestone Dates
	D3	Iteratively developing the training programme responding constructively to feedback from the Department and External Bodies and meeting deadlines for returning drafts.	Meet 100% of deadlines agreed.

Service Improvement	SI1	Develop a full Continuous Improvement Plan and report progress to the Department against agreed milestones.	Meet 100% of deadlines agreed.
	SI2	Cooperate with the requirements of the QA function by supplying information, facilitating visits, and otherwise supporting the implementation and ongoing work of the QA function.	Respond and comply with to 100% of QA function requirements and requests.
Digital	D1	Digital Service Levels are set out in Annex A of Schedule 14	As set out in Schedule 14
Recruitment	R1	Recruit over 100% of overall recruitment target for NPQ for Leading Teaching	To have recruited 100% or above of the overall recruitment target for Cohort 1 by 31 <sup>st</sup> October 2021 and 100% of the overall recruitment target (which is the sum total of Cohort 1 and Cohort 2) for NPQ for Leading Teaching by 31 <sup>st</sup> January 2022.
	R2	Recruit over 100% of overall recruitment target for NPQ for Leading Behaviour and Culture	To have recruited 100% or above of the overall recruitment target for Cohort 1 by 31 <sup>st</sup> October 2021 and 100% of the overall recruitment target (which is the sum total of Cohort 1 and Cohort 2) for NPQ for Leading Behaviour and Culture 31 <sup>st</sup> January 2022.
	R3	Recruit over 100% of overall recruitment target for NPQ for Leading Teacher Development	To have recruited 100% or above of the overall recruitment target for Cohort 1 by 31 <sup>st</sup> October 2021 and 100% to have recruited 100% of the overall recruitment target (which is the sum total of Cohort 1 and Cohort 2) for NPQ for Leading Teacher Development by 31 <sup>st</sup> January 2022.
	R4	Recruit over 100% of overall recruitment target for NPQ for Senior Leadership	To have recruited 100% or above of the overall recruitment target for Cohort 1 by 31 <sup>st</sup> October 2021 and to have recruited 100% of the overall recruitment target (which is the sum total of Cohort 1 and Cohort 2) for NPQ for

			Senior Leadership 31 <sup>st</sup> January 2022.
	R5	Recruit over 100% of overall recruitment target for NPQ for Headship	To have recruited 100% or above of the overall recruitment target for Cohort 1 by 31 <sup>st</sup> October 2021 and to have recruited 100% of the overall recruitment target (which is the sum total of Cohort 1 and Cohort 2) for NPQ for Headship 31 <sup>st</sup> January 2022.
	R6	Recruit over 100% of overall recruitment target for NPQ for Executive Leadership	To have recruited 100% or above of the overall recruitment target for Cohort 1 by 31 <sup>st</sup> October 2021 and to have recruited 100% of the overall recruitment target (which is the sum total of Cohort 1 and Cohort 2) for NPQ for Executive Leadership 31 <sup>st</sup> January 2022.

## KPIS

- 1.8 The Parties shall monitor the Contractor's performance against each of the KPIs listed in Annex A of this Schedule (KPIs) at agreed intervals to be confirmed at contract award.
- 1.9 If at the agreed reporting milestone, the Contractor:
- 1.9.1 achieves a KPI, performance measures will be achieved, and no further action will be required;
  - 1.9.2 does not achieve a KPI, it will be declared a 'Service Failure' and the Department reserves the right to take action in line with paragraphs 2.11 to 2.15 (Consequence of Service Failure) of this Schedule.
- 1.10 In line with the cross-government transparency agenda the Department reserves the right to make the Contractor's performance against the KPIs in Annex A of this Schedule available in the public domain, which may include publishing them on gov.uk and including them in any related transparency reporting.

## 2 PERFORMANCE MANAGEMENT

- 2.1 The Department shall monitor the Contractor's performance and progress against the Service Specification (Schedule 1: Part 1), the Contractor's Solution (Schedule 1: Part 2), the Implementation Plan (Schedule 7), and Pricing (Annex 1 of Schedule 2: Part 1) within a Reporting Period and during performance review meetings. The Contractor shall cooperate with the Department in this regard and provide any information and evidence reasonably required by the Department within five (5) Working Days of a request being received.
- 2.2 The Contractor shall appoint a named Performance Manager who will cooperate with the Department to ensure that the Services are delivered as specified in the Contract and that Service Levels, Minimum Targets and KPIs are achieved.

- 2.3 The purpose of the performance review meetings is to encourage an open and regular dialogue between the Parties. The Parties shall review performance, discuss opportunities for continuous improvement, and address any complaints or persistent problems encountered.
- 2.4 Performance reviews shall be documented. The Contractor shall provide any information and data requested by the Department to facilitate the reviews and arrange, where necessary, access to any of Contractor Premises or delivery locations, including those operated by Sub-Contractors.
- 2.5 The Department may instruct the Contractor to take appropriate remedial action where the Department reasonably considers that the Implementation Plan and/or a Performance Improvement Plan is not being complied with, and the Contractor shall take such remedial action.
- 2.6 If there is a failure to achieve a Service Level, Minimum Target or KPI, the Contractor shall use all reasonable endeavours to immediately minimise the impact of any failure and to prevent such a failure from recurring.
- 2.7 The Contractor shall ensure that all systems and processes used for the monitoring and recording of performance are robust.

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

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

#### **Consequence of Service Failure**

- 2.11 With the exception of Service Levels for Recruitment, where the Service Failure is a result of the Contractor failing to meet any one Service Level by the dates set out in Table 1 of Schedule 2 Part 2 the Contractor must agree and implement a plan to rectify the Service Failure within agreed timescales. where the Service Failure is as a result of the Contractor failing to meet any one Service Level by the dates set out in Table 1 of Schedule 2 Part 2 for two consecutive Monthly Reporting Periods, and the Contractor has not addressed and resolved the Service Level failure within the time agreed between the Contractor and the Department, the Department will apply a Service Credit.
- 2.12 Where the Service Failure is as a result of the Contractor failing to meet one or more of Service Levels that relate to Recruitment by the dates set put in Table 1 of Schedule 2 Part 2, the Contractor must agree and implement a plan to rectify the Service Failure within agreed timescales. If the Contractor fails to address and resolve the Service Level Failure relating to Recruitment within the timescales agreed the Department may apply a Service Credit at its discretion.
- 2.13 Without prejudice to any other rights or remedies arising under this Contract, including under clause 10 (Termination) for material breach, if the Contractor incurs a Service Failure in any Relevant Period, the Contractor acknowledges and agrees that the Department shall have the right



to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

- 2.13.1 The Department shall be entitled to require the Contractor, and the Contractor agrees to prepare and provide to the Department, a plan for improvement (an "Improvement Plan") within ten (10) Working Days of a written request by the Department for such Improvement Plan. Such Improvement Plan shall be subject to the Department's prior approval and the Contractor will be required to implement any approved Improvement Plan, as soon as reasonably practicable;
  - 2.13.2 The Department shall be entitled to require the Contractor, and the Contractor agrees to attend, within a reasonable time one (1) or more meetings at the request of the Department in order to resolve the issues raised by the Department in its notice to the Contractor requesting such meetings;
  - 2.13.3 The Department shall be entitled to serve a notice of improvement ("Improvement Notice") on the Contractor and the Contractor shall implement such requirements for improvement as set out in the Improvement Notice;
  - 2.13.4 The Department shall be entitled to issue interim performance measures and/or milestones in order to monitor the Contractors implementation of any Improvement Plan or Improvement Notice;
  - 2.13.5 If not already applied to the Service Failure prior to this point, apply a Service Credit.
- 2.14 In the event that the Department has, in its absolute and sole discretion, invoked one or more of the remedies set in paragraph 2.11 and 2.12 above the Department may suspend the Contractor from the Framework Agreement pending the Department being satisfied that the Contractor has;
- 2.13.1 implemented the requirements for improvement set out in the Improvement Notice; and/or
  - 2.13.2 implemented an Improvement Plan approved by the Department; and/or
  - 2.13.3 met the interim performance measures and/or milestones.
- 2.15 Whether or not the Department has exercised its rights under pursuant to paragraph 2.13 in the event that the Department has, in its absolute and sole discretions invoked one or more of the remedies set out in paragraph 2.12 above and allowed the Contractor reasonable opportunity to remedy the Service Failure, and the Contractor either;
- 2.15.1 fails to implement such requirements for improvement as set out in the Improvement Notice; and/or
  - 2.15.2 fails to implement an Improvement Plan approved by the Department; and/or
  - 2.15.3 fails to meet the interim performance measures and/or milestones,
- then (without prejudice to any other rights and remedies of termination provided for in this Contract), the Department shall be entitled to terminate this Contract and with immediate effect by notice in writing in accordance with clause 10.4.1. Termination of the Contract will be considered a Material Default and the Department may at its absolute discretion terminate the Framework Agreement as per paragraph 7.4 of the Framework Agreement.
- 3 SERVICE CREDITS**
- 3.1 Accrual of Service Credits shall entitle the Department to a reduction in the Charges.
  - 3.2 Financial consequences of Service Credits will be calculated against the Total Contract Value. The Contractor shall off-set the value of any Service Credits against the Charges for the Contract up to a maximum of 5% of the Total Contract Value.
  - 3.3 The Contractor confirms that it has taken Service Credits and the potential financial consequences into account in calculating the Charges. Both Parties agree that the Service Credits are a



reasonable method of adjusting the Charges to reflect failure to meet minimum performance standards.

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

3.5 Table 3: Service Credits

<b>Service Credits accrued:</b>	<b>Financial consequence equivalent to:</b>
1 Service Credit	1% of Call Off Contract Value
2 Service Credits	2% of Call Off Contract Value
3 Service Credits	3% of Call Off Contract Value
4 Service Credits	4% of Call Off Contract Value
5 or more Service Credits	5% of Call Off Contract Value

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

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

Table A – Key Performance Indicators				
Ref	Type	Measure	Monitoring Method	Target and Milestone
1	Recruitment	The number of Teachers recruited for each of the Cohort Commencement Dates included in the Call Off Contracts.	Monthly monitoring during the Call Off Contract.	100% of the target achieved at the start of each Cohort.
2	NPQ Assessment Quality	Accuracy level of Summative Assessments undertaken by Teachers completing NPQs, within the Call Off Contract Cohort Windows.	Annually, linked to the completion of assessments	95% accuracy level for all Summative Assessments undertaken by Teachers completing NPQs, within the Call Off Contract Cohort Windows.
3	Retention	Number teachers who commence an NPQ during the Call Off Contract, remain engaged until to end of the programme.	Monthly monitoring during the Call Off Contract.	At least 95% of Teachers who commence an NPQ during the Call Off Contract, remain engaged until the end of the programme.
4	Satisfaction	The numbers of Teachers who commence an NPQ or NPQH Additional Support Offer for New Head Teachers during the Call Off Contract that rate their training as good or above at the end of the programme.	Satisfaction will be measured through a DfE designed survey all providers will be required to use. To be completed by Teachers at the end of each year of the programme.	A minimum of 80% of the Teachers who commence NPQ or NPQH Additional Support Offer for New Head Teachers during the Call Off Contract who rate the training good or above at the end of the programme.

## SCHEDULE 3: ADDITIONAL CLAUSES

### Departmental Security Standards

“BPSS”

“Baseline Personnel Security Standard”

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

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

“CCSC”

“Certified Cyber Security Consultancy”

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

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

“CCP”

“Certified Professional”

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

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

“CC”

“Common Criteria”

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

“CPA”

“Commercial Product Assurance”

[formerly called “CESG Product Assurance”]

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

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

“Cyber Essentials”

“Cyber Essentials Plus”

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

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

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

"Data"	shall have the meanings given to those terms by the GDPR
"Data Controller"	
"Data Processor"	
"Personal Data"	
"Sensitive Personal Data"	
"Data Subject", "Process" and "Processing"	
"Department's Data"	is any data or information owned or retained in order to meet departmental business objectives and tasks, including:
"Department's Information"	<ul style="list-style-type: none"> <li>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> <li>(i) supplied to the Contractor by or on behalf of the Department; or</li> <li>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</li> </ul> </li> <li>(b) any Personal Data for which the Department is the Data Controller;</li> </ul>
"Department"	means the Department for Education
"Department"	
"Departmental Security Standards"	means the Department's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
"Digital Marketplace / GCloud"	the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.
"FIPS 140-2"	this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled 'Security Requirements for Cryptographic Modules'. This document is the de facto security standard used for the accreditation of cryptographic modules.
General Data Protection Regulation (GDPR)	replaces Data Protection Act clauses for use in contracts that are live on or after 25 <sup>th</sup> May 2018.
"Good Industry Practice"	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
"Industry Good Practice"	

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



media, as described in the Government Security Classification Policy.

“Secure Sanitisation”

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

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

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

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

“Security and Information Risk Advisor”

“CCP SIRA”

“SIRA”

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

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

“SPF”

“HMG Security Policy Framework”

This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.

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

“Tailored Assurance”

[formerly called “CTAS”, or,

“CESG Tailored Assurance”]

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

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

- 1.1. The Contractor shall comply with Departmental Security Standards for Contractors, which include but are not constrained to the following clauses;
- 1.2. As the Contractor will be handling information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - Action Note 09/14 25 May 2016, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
- 1.3. The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements)

standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).

- 1.4. The Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.5. The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this Service, and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 1.6. The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 1.7. Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- 1.8. Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to clause 1.9 and 1.10 below.
- 1.9. Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.10. All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or Sub-Contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.11. Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- 1.12. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 1.13. At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or

method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or Sub-Contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.

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



such as: a NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA).

## **SCHEDULE 4: FINANCIAL DISTRESS**

### **1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

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

### **2 FINANCIAL STANDING**

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

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

2.2 The Contractor shall:

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

### **3 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT**

3.1 In the event of:

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

- (e) any of the following:
- (i) commencement of any litigation against the Contractor, the Guarantor or any Key Sub-Contractor with respect to financial indebtedness greater than £5,000,000 million (Five Million Pounds) or obligations under a service contract with a Total Contract Value greater than £5,000,000 million (Five Million Pounds) and which is reasonably likely to be adversely determined;
  - (ii) non-payment by the Contractor, the Guarantor or any Key Sub-Contractor of any material financial indebtedness;
  - (iii) any material financial indebtedness of the Contractor, the Guarantor or any Key Sub-Contractor becoming due as a result of an event of default; or
  - (iv) the cancellation or suspension of any material financial indebtedness in respect of the Contractor, the Guarantor or any Key Sub-Contractor,
- in each case which the Department reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement;

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

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

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

3.3 The Contractor shall:

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

3.4 Where the Contractor reasonably believes that the relevant Financial Distress Event under paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer

exists, it shall notify the Department and the Parties may agree that the Contractor shall be relieved of its obligations under paragraph 3.3.

#### **4 TERMINATION RIGHTS**

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

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

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

### **1 INTRODUCTION**

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

### **2 PRINCIPLES**

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

### **3 PROCEDURE**

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

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

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

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

### Contract Change Note for the Contract Change Procedure

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

WHEREAS the Contractor and the Department entered into a Call Off Contract for the provision of National Professional Qualifications and NPQH Additional Support Offer for New Headteachers related services dated [date] and now wish to amend that Contract;

### Reason for proposed change

[Party proposing change to complete]

### Full details of proposed change

[Party proposing change to complete]

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

[Party proposing change to complete]

### IT IS AGREED as follows:

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

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

**By** .....

**Name** .....

**Title** .....

**Date** .....

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

**By** .....

**Name** .....

**Title** .....

**Date** .....



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

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

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

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

<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Data will be retained for 6 years after the end of the term. At the end the data retention period, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method.</p>
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## **SCHEDULE 7: IMPLEMENTATION PLAN – NOT USED FOR DELIVERY**

Not used.

## **SCHEDULE 8 QUALITY ASSURANCE**

### **1 DEFINITIONS**

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

<b>“Quality Failure”</b>	means where Quality Assurance processes have identified a failure to adhere to the Quality Assurance Framework or any other failure to meet the quality requirements set out in the Call Off Contract.
<b>“QA Function”</b>	means the Department or the third party appointed by the Department to monitor Quality Assurance delivery in accordance with the Specification.
<b>“Quality Assurance”</b>	means how the Department or its representatives will measure the Contractor's performance in developing and delivering the training programme.
<b>“Quality Assurance Framework”</b>	means the documents that set out quality requirements and processes that the Contractor shall comply with when delivering the services.
<b>“Service Credit”</b>	shall have the same meaning as set out in Part 2 of Schedule 2.
<b>“Service Failure”</b>	shall have the same meaning as set out in Part 2 of Schedule 2.
<b>“Service Improvements”</b>	means a type of service improvement, categorised in accordance with paragraph 2.9 of this Schedule, recommended by the Quality Assurance function.

### **2 GENERAL**

- 2.1 The Contractor complies with the Quality Assurance requirements set out in the Specification, this Schedule and the Quality Assurance Framework.
- 2.2 The Contractor ensures they implement effective quality management arrangements to ensure the Services provided in accordance with the Specification, this Schedule and the Quality Assurance Framework.
- 2.3 The Contractor shall develop mechanisms for accurately moderating Summative Assessment answers to ensure faithful and consistent application of the mark scheme across Delivery Partners. Additionally, the Contractor will work with the QA Function, any external moderator appointed to that function, to ensure a sample of up to 10% of Summative Assessment submissions are externally moderated.
- 2.4 The Department's QA Function will monitor the quality of the Services being provided by the Contractor. The Department may employ third parties to undertake some or all the work of the QA Function.
- 2.5 The Contractor supports the work of, and collaborates with, the QA Function and takes the necessary actions as recommended by the Department or its representative.
- 2.6 The QA Function will quality assure the Contractor and its Delivery Partners to ensure the Contractor is complying with Quality Assurance Framework and the Contract. They shall do this by quality assuring areas including, but not limited to, the following:
- 2.6.1 content development – reviewing and approving all content and training materials;
  - 2.6.2 ongoing contractual requirements – ensuring the Contractor is complying with their obligations, including reviewing, and using data produced by the Contractor;
  - 2.6.3 training delivery – including attending training sessions delivered by the Contractor and engaging with Delivery Partners and Teachers where it deems it relevant;
  - 2.6.4 assessment delivery – reviewing Summative Assessment materials (case studies and mark

schemes) and, where it deems relevant, request evidence as to how Formative Assessment is used to inform delivery, and as to how the Contractor is compliant with requirements related to delivering summative assessment;

- 2.6.5 Contractor's QA systems – sample checking/reviewing the Contractor's QA system and management arrangements; and
- 2.6.6 any specific areas set out in the Call Off Order.
- 2.7 The Contractor shall cooperate with the ongoing requirements of the QA Function in supplying information, facilitating visits to the Contractor and its Delivery Partners and Teachers, and otherwise supporting the work of the QA Function to make assessments of quality according to an agreed Quality Assurance Framework.
- 2.8 The Contractor shall engage with the QA Function as required, including facilitating QA Function contact with Delivery Partners. The number and frequency of interactions between the QA Function and the Contractor will be depend on the quality of the Services that is being provided by the Contractor.
- 2.9 The QA function may make recommendations that the Contractor will be required to action in relation to:
  - 2.9.1 service improvements – improvements that arise out of continuous improvements, lessons learnt, user feedback and best practice or any other action that at the QA functions discretion would benefit from being adopted across the framework; and
  - 2.9.2 quality and performance – where Quality Assurance processes have identified a failure to adhere to the quality framework, examples of poor practice, breaches of Contract or any other action that at the QA function's discretion needs to be addressed to ensure that the quality of the Services is being provided in accordance with the requirements set out in this Contract.

### **3 SERVICE IMPROVEMENTS**

- 3.1 Where the QA Function makes service improvement recommendations, they shall be under one of the following categories:
  - 3.1.1 continuous improvement – service development and improvement activity that is considered to be within the Contractors requirement to apply continuous improvement, respond to feedback and adopt best practice in regard to content and delivery for both ongoing and future Cohorts.
  - 3.1.2 service development – activity that requires the Contractor to make considerable revisions to their content and/or delivery to a level whereby it is not possible to implement mid-Cohort and therefore will only be required for future Cohorts. In this instance the Contractor should attempt to implement any such aspects of the recommendation that can be made under paragraph 3.1.1 but will not be required to implement the full recommendation until the next Call Off Contract.
  - 3.1.3 urgent service development – activity that requires the Contractor to make immediate and significant revisions to their content and/or delivery in regard to ongoing Cohorts.
- 3.2 The Contractor implements service improvements that are in accordance with the requirements set out in this Call Off Contract (or minor additions or amendments to) at their own cost.
- 3.3 If the Department requires changes that are additional to those set out in the Call Off Contract and result in additional cost to the Contractor, the cost is assessed and any payment is made in accordance with Schedule 2: Part 1 Pricing via a Variation.
- 3.4 If the Contractor fails to implement a Service Improvement recommendation to the required standard as set out by the Department and within the specified timescale then the Department may, at its sole discretion, apply a Service Credit or any other.

## **4 QUALITY AND PERFORMANCE**

- 4.1 Where the QA Function identifies quality and/or performance issues they will be identified under one of the following categories:
  - 4.1.1 recommendation – minor issues or concerns that will need to be resolved by the Contractor within the scope and timescale of the recommendation.
  - 4.1.2 A Quality Failure – significant issues or concerns that represent a material failure to meet the quality requirements or quality framework.
- 4.2 If the Contractor receives 4] or more recommendations then the Department will issue a suspended Service Credit. If, , the recommendations have not been resolved in full within the timescales imposed by the Department, then the Service Credit will be applied (as set out in paragraph 3 of Part 2 of Schedule 2).
- 4.3 If the Contractor receives a Quality Failure, then the Department will issue a suspended Service Credit. If, in the opinion of the QA Function, the Quality Failure has not been resolved in full within the timescales imposed by the Department then it will be considered a Service Failure, and the Department reserves the right to take action in line with paragraphs 2.11 to 2.14 (Consequence of Service Failure) of Part 2 of Schedule 2.

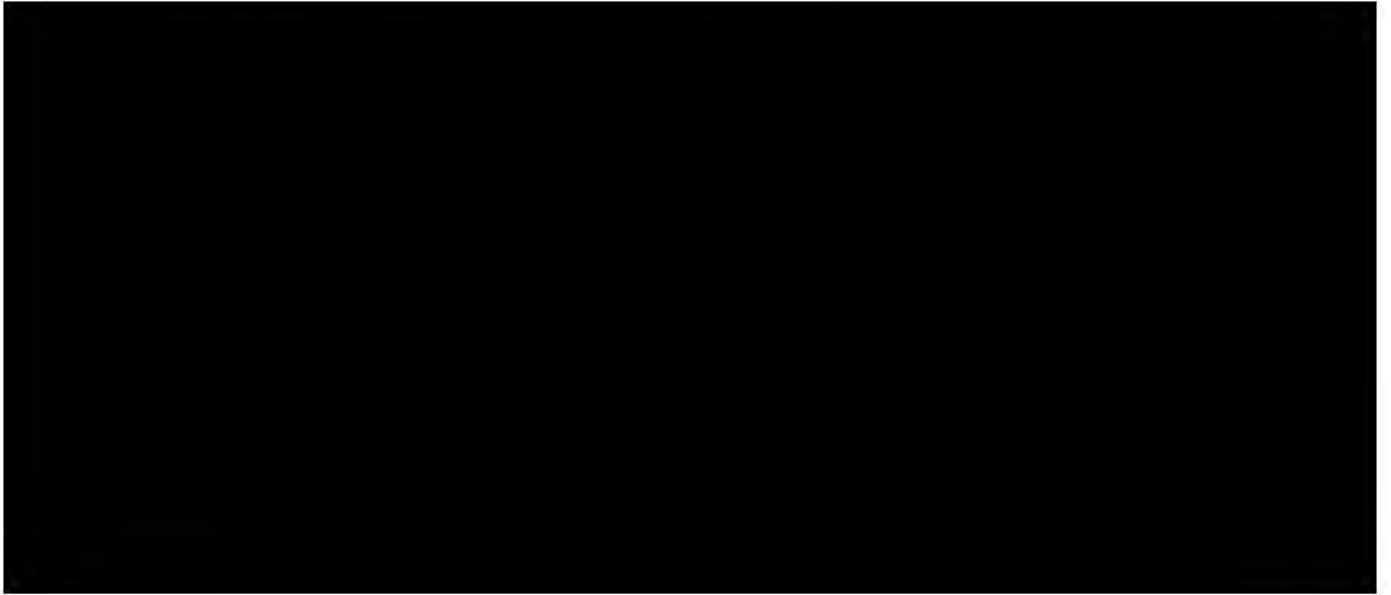
## **5 QUALITY ASSURANCE REPORTING**

- 5.1 The Department reserves the right to use (which may include publishing under Government transparency policy) reporting data on the Contractors performance against the QA Function requirements as a means of demonstrating the quality and performance of the framework. The reporting metrics are likely to be, but are not limited to:
  - 5.1.1 Service Improvements – % of recommendations adopted within timescales.
  - 5.1.2 quality and performance – number of recommendations and Quality Failure.

## **6 COMPLAINTS**


- 6.1 The Contractor shall implement, maintain and operate effective and clear procedures for receiving, investigating and responding to complaints.
- 6.2 The Contractor shall provide the Department with information about the number and nature of complaints it receives and the outcome of each complaint it processes and in accordance with 6.3.2 & 6.3.3 below. This information shall be provided with the Management Information report.
- 6.3 In addition, the Contractor shall ensure;
  - 6.3.1 complaints are investigated by individuals not involved in the subject matter of the complaint;
  - 6.3.2 report all complaints about the Services to Department within three (3) Working Days from the date of the complaint;
  - 6.3.3 provide a meaningful response to all complainants by telephone or in person, as well as in writing, copying in the Department, within five (5) Working Days from the date of the complaint.

## **SCHEDULE 9: KEY PERSONNEL AND SUB-CONTRACTORS**





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

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

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

## SCHEDULE 11 - SERVICE CONTINUITY PLAN

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

### 2 SERVICE CONTINUITY PLAN

- 2.1 Within 40 Working Days from the Contract Date the Contractor shall prepare and deliver to the Department for the Department’s written approval a Service Continuity Plan, which shall detail the processes and arrangements that the Contractor shall follow to:
- ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Contractor, any Key Sub-Contractor and/or any Contractor Group member); and
  - the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

be divided into four parts:

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

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

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

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

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

2.3 Following receipt of the draft Service Continuity Plan from the Contractor, the Department shall:

review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and

notify the Contractor in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Department.

2.4 If the Department rejects the draft Service Continuity Plan:

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

the Contractor shall then revise the draft Service Continuity Plan (taking reasonable account of the Department's comments) and shall re-submit a revised draft Service Continuity Plan to the Department for the Department's approval within 20 Working Days of the date of the Department's notice of rejection. The provisions of paragraph 0 and this paragraph 0 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

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

3.1 Part A of the Service Continuity Plan shall:

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

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

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

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

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

contain a risk analysis, including:

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

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

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

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

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

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

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

identify the procedures for reverting to “normal service”;

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

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

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

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

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

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

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

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

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

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

**4 SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY  
PRINCIPLES AND CONTENTS**

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

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

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

4.2 The Business Continuity Plan shall:

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

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

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

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

## 5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY PRINCIPLES AND CONTENTS

5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Contractor ensures continuity of the business operations of the Department supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

the technical design and build specification of the Disaster Recovery System;

details of the procedures and processes to be put in place by the Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

data centre and disaster recovery site audits;

backup methodology and details of the Contractor's approach to data back-up and data verification;

identification of all potential disaster scenarios;

risk analysis;

documentation of processes and procedures;

hardware configuration details;

network planning including details of all relevant data networks and communication links;

invocation rules;

Service recovery procedures; and

steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;

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

details of how the Contractor shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;

access controls to any disaster recovery sites used by the Contractor in relation to its obligations pursuant to this Schedule; and  
testing and management arrangements.

## **6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN**

### **PRINCIPLES AND CONTENTS**

- 6.1 The Insolvency Continuity Plan shall be designed by the Contractor to permit continuity of the business operations of the Department supported by the Services through continued provision of the Services following an Insolvency Event of the Contractor, any Key Sub-Contractor and/or any Contractor Group member with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:
- communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Contractor Personnel, Key Sub-Contractor personnel and Contractor Group member personnel;
  - identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Contractor, Key Sub-Contractors and Contractor Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
  - plans to manage and mitigate identified risks;
  - details of the roles and responsibilities of the Contractor, Key Sub-Contractors and/or Contractor Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
  - details of the recovery team to be put in place by the Contractor (which may include representatives of the Contractor, Key Sub-Contractors and Contractor Group members); and
  - sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Contractor.

## **7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN**

- 7.1 The Contractor shall review and update the Service Continuity Plan (and the risk analysis on which it is based):
- on a regular basis and as a minimum once every 6 months;
  - within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to paragraph 0;
  - within 14 days of a Financial Distress Event;
  - within 30 days of a Corporate Change Event; and
- where the Department requests any additional reviews (over and above those provided for in paragraphs 0 to 0) by notifying the Contractor to such effect in writing, whereupon the Contractor shall conduct such reviews in accordance with the Department's written requirements. Prior to starting its review, the Contractor shall provide an accurate written estimate of the total costs payable by the Department for the Department's approval. The costs of both Parties of any such additional reviews shall be met by the Department except that the Contractor shall not be entitled to charge the Department for any costs that it may incur above any estimate without the Department's prior written approval.
- 7.2 Each review of the Service Continuity Plan pursuant to paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the

original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Contractor within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Department shall reasonably require. The Contractor shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Department a report (a "**Review Report**") setting out:

the findings of the review;

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

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

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

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

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

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

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

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

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

## **8 TESTING OF THE SERVICE CONTINUITY PLAN**

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

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

Continuity Plan fails the additional test in which case the Contractor's costs of that failed test shall be borne by the Contractor.

- 8.3 The Contractor shall undertake and manage testing of the Service Continuity Plan in full consultation with the Department and shall liaise with the Department in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Department in this regard. Each test shall be carried out under the supervision of the Department or its nominee.
- 8.4 The Contractor shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Department. Copies of live test data used in any such testing shall be (if so required by the Department) destroyed or returned to the Department on completion of the test.
- 8.5 The Contractor shall, within 20 Working Days of the conclusion of each test, provide to the Department a report setting out:
- the outcome of the test;
  - any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
  - the Contractor's proposals for remedying any such failures.
- 8.6 Following each test, the Contractor shall take all measures requested by the Department, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Contractor, at no additional cost to the Department, by the date reasonably required by the Department and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Contractor of any of its obligations under this Agreement.
- 8.8 The Contractor shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Department.

## **9 INVOCATION OF THE SERVICE CONTINUITY PLAN**

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



## SCHEDULE 12 – BREAKAGE COSTS

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

materially involved in the provision of the Services or any part of the Services;

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

## **2 BREAKAGE COSTS PAYMENT**

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

- (d) are not Contract Breakage Costs relating to contracts or Sub-Contracts with Affiliates of the Contractor; and
- (e) relate directly to the termination of the Services.

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

2.2 The Breakage Costs Payment shall not exceed the lower of:

- (a) the relevant limit set out in Annex 1 (Maximum Breakage Costs); and
- (b) 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

#### **Redundancy Costs**

2.3 The Department shall not be liable under this Schedule for any costs associated with Contractor Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.

2.4 Where the Contractor can demonstrate that a member of Contractor Personnel will be made redundant following termination of this Contract, but redeployment of such person is possible and would offer value for money to the Department when compared with redundancy, then the Department shall pay the Contractor the actual direct costs incurred by the Contractor or its Sub-Contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Contractor Personnel.

#### **Contract Breakage Costs**

2.5 The Contractor shall be entitled to Contract Breakage Costs only in respect of Sub-Contracts which:

- (a) are not assigned or novated to a Replacement Supplier at the request of the Department); and
- (b) the Contractor can demonstrate:
  - (i) are surplus to the Contractor's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other Departments; and
  - (ii) have been entered into by it in the ordinary course of business.

2.6 The Contractor shall seek to negotiate termination of any Sub-Contracts with the relevant Sub-Contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.

2.7 Except with the prior written agreement of the Department, the Department shall not be liable for any costs (including cancellation or termination charges) that the Contractor is obliged to pay in respect of:

- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Contractor premises which may arise as a consequence of the termination of this Contract; and/or
- (b) Assets not yet installed at the Termination Date.

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

3.1 The Contractor agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs and Redundancy Costs by:

- (a) the appropriation of Assets, employees and resources for other purposes;
- (b) at the Department's request, assigning any Sub-Contracts to the Department or a third party acting on behalf of the Department; and

- (c) in relation to Sub-Contracts that are not to be assigned to the Department or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.
- 3.2 If Assets, employees and resources can be used by the Contractor for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, and Redundancy Costs payable by the Department or a third party to the Contractor. In the event of any dispute arising over whether the Contractor can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the dispute shall be determined in accordance with the procedure set out in clause 39 (Dispute Resolution).

#### **4 FULL AND FINAL SETTLEMENT**

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

#### **5 INVOICING FOR THE PAYMENTS ON TERMINATION**

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

#### **6 SET OFF**

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

#### **7 NO DOUBLE RECOVERY**

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

#### **8 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT**

- 8.1 The Department may issue a Request for Estimate at any time during the Contract Period provided that no more than 2 Requests for Estimate may be issued in any 6 month period.
- 8.2 The Contractor shall within 20 Business Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Breakage Costs that would be payable by the Department based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "Termination Estimate"). The Termination Estimate shall:
- (a) be based on the relevant amounts set out in the Financial Model;
  - (b) include:
    - (i) details of the mechanism by which the Termination Payment is calculated;
    - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-Contract and appropriate supporting documentation; and
    - (iii) such information as the Department may reasonably require; and

- (c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Business Days.
- 8.3 The Contractor acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Department to terminate this Contract.

## ANNEX 1: MAXIMUM BREAKAGE COSTS PAYMENT

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

Termination Date	Maximum Breakage Costs Payment
Anytime in the first Contract Year	██████████
Anytime in the second Contract Year	██████████
Anytime in third Contract Year	██████████
Anytime in fourth Contract Year	██████

## **SCHEDULE 13 – STAFF TRANSFER**

Not used.

## SCHEDULE 14 - CONTRACTOR'S DIGITAL PLATFORM

### 1. Definitions

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

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



	the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;
<b>"ICT Environment"</b>	the Department System and the Contractor System;
<b>"Licensed Software"</b>	all and any Software licensed by or through the Contractor, its Sub-Contractors or any third party to the Department for the purposes of or pursuant to this Contract, including any COTS Software;
<b>"Maintenance Schedule"</b>	has the meaning given to it in paragraph 5 of this Schedule;
<b>"Malicious Software"</b>	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>"New Release"</b>	an item produced primarily to extend, alter or improve the Contractor System or any part of it by providing additional functionality or performance enhancement (whether or not defects in the Software are also corrected) while still retaining the original designated purpose of that part of the Contractor's System;
<b>"Open Source Software"</b>	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
<b>"Operating Environment"</b>	means the Department System and any premises (including the Department Premises, the Contractor's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>a) the Services are (or are to be) provided; or</li> <li>b) the Contractor manages, organises or otherwise directs the provision or the use of the Services; or</li> <li>c) where any part of the Contractor System is situated;</li> </ul>
<b>"Permitted Maintenance"</b>	has the meaning given to it in paragraph 55.2 of this Schedule;
<b>"Software"</b>	Specially Written Software COTS Software and non-COTS Contractor and third party Software;
<b>"Source Code"</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;

**"Specially Written Software"**

any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Contractor (or by a Sub-Contractor or other third party on behalf of the Contractor) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;

## **2. Licensed software warranty**

2.1. The Contractor represents and warrants that:

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

## **3. Provision of the Digital Platform**

3.1. The Contractor shall:

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

#### Accessibility:

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

#### Hosting

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

### 4. Audit

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

### 5. Maintenance of the ICT Environment

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

### 6. Malicious Software

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

quarantined or otherwise identified by the Department when provided to the Contractor; and

- 6.1.3.2. by the Department, if the Malicious Software originates from the Department Software or the Department Data (whilst the Department Data was under the control of the Department).

## **7. Service Management Software & Standards**

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

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

## ANNEX TO SCHEDULE 14 - SERVICE LEVELS

### 1. DEFINITIONS

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

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

### 2. Service Levels

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

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

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

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

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

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

### 3. Planned maintenance

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

### 4. Failure to meet the Service Levels

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

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

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

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

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