

**THE SECRETARY OF STATE FOR EDUCATION**

**- AND -**

**OPEN AWARDS**

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**CALL OFF CONTRACT  
FOR THE SUPPLY OF THE  
Emergency End Point  
Assessment Services**

**Rail and Rail Systems Engineer L5  
Standard - ST0495**

## CONTENTS

<b>1. INTERPRETATION</b>	<b>1</b>
<b>2. COMMENCEMENT AND CONTINUATION</b>	<b>9</b>
<b>3. CONTRACTOR'S OBLIGATIONS</b>	<b>9</b>
<b>4. DEPARTMENT'S OBLIGATIONS</b>	<b>10</b>
<b>5. THE SERVICES</b>	<b>10</b>
<b>6. MANAGEMENT</b>	<b>10</b>
<b>7. CONTRACTOR'S EMPLOYEES AND SUB-CONTRACTORS</b>	<b>11</b>
<b>8. SAFEGUARDING</b>	<b>12</b>
<b>9. INTELLECTUAL PROPERTY RIGHTS (IPR)</b>	<b>13</b>
<b>10. WARRANTY AND INDEMNITY</b>	<b>14</b>
<b>11. FINANCIAL DISTRESS</b>	<b>16</b>
<b>12. TERMINATION</b>	<b>16</b>
<b>13. STATUS OF CONTRACTOR</b>	<b>17</b>
<b>14. CONFIDENTIALITY</b>	<b>17</b>
<b>15. FREEDOM OF INFORMATION</b>	<b>19</b>
<b>16. AUDIT</b>	<b>20</b>
<b>17. TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION</b>	<b>20</b>
<b>18. TAX INDEMNITY</b>	<b>22</b>
<b>19. DATA PROTECTION</b>	<b>23</b>
<b>20. AMENDMENT AND VARIATION</b>	<b>24</b>

<b>21. ASSIGNMENT AND SUB-CONTRACTING</b>	<b>24</b>
<b>22. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999</b>	<b>25</b>
<b>23. WAIVER</b>	<b>25</b>
<b>24. FORCE MAJEURE</b>	<b>25</b>
<b>25. NOTICES</b>	<b>25</b>
<b>26. DISPUTE RESOLUTION</b>	<b>26</b>
<b>27. DISCRIMINATION</b>	<b>26</b>
<b>28. LAW AND JURISDICTION</b>	<b>26</b>
<b>29. PAYMENTS AND INVOICING</b>	<b>26</b>
<b>SCHEDULE 1: THE SPECIFICATION</b>	<b>30</b>
<b>SCHEDULE 2: PART 1 – PRICING</b>	<b>36</b>
<b>ANNEX 1 TO SCHEDULE 2: PART 1 – CHARGES PAYMENT PROCESS</b>	<b>39</b>
<b>SCHEDULE 2: PART 2 – PERFORMANCE</b>	<b>42</b>
<b>SCHEDULE 3: FINANCIAL DISTRESS</b>	<b>46</b>
<b>SCHEDULE 4 – CHANGE CONTROL PROCEDURE</b>	<b>49</b>
<b>ANNEX 1 TO SCHEDULE 4 - CONTRACT CHANGE NOTE PRO FORMA</b>	<b>51</b>
<b>SCHEDULE 5: IMPLEMENTATION PLAN</b>	<b>53</b>
<b>SCHEDULE 6 QUALITY ASSURANCE</b>	<b>60</b>
<b>SCHEDULE 7: KEY PERSONNEL AND SUB-CONTRACTORS</b>	<b>62</b>
<b>SCHEDULE 8: COMMERCIALY SENSITIVE INFORMATION</b>	<b>63</b>

**THIS CONTRACT** is made on

**BETWEEN**

**THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT acting as part of the Crown ("The ESFA"); or

**OPEN AWARDS**

(Company No 05462874 ) whose registered office is at

17 De Havilland Drive, Estuary Commerce Park, Speke, Merseyside, L24 8RN

(the "Contractor");

together, the "Parties"

**WHEREAS:**

- a) By way of a Find a Tender notice dated 17 February 2021, the ESFA undertook a procurement for service providers to be appointed to a Framework Agreement for the supply of Emergency End Point Assessment Materials.
- b) The Contractor was one of the Potential Providers that submitted the most economically advantageous tender and has therefore been appointed to the framework agreement.
- c) This Call Off Contract ("the Contract") sets out the terms and conditions that govern the provision of the services.

**NOW IT IS HEREBY AGREED AS FOLLOWS:-**

**1. INTERPRETATION**

1.1. In this Contract the following words shall mean:

"Agent"	means an organisation or individual engaged by the ESFA to represent it;
"Affiliate"	in relation to any person, the holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 and Schedule 6 of the Companies Act 2006
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"><li>(1) Government Department;</li><li>(2) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>(3) Non-Ministerial Department; or</li><li>(4) Executive Agency;</li></ul>

“Charge”	means the Charge made by the Contractor to the ESFA in accordance with the Part 1 of Schedule 2 of this Contract;
“Confidential Information”	means information as defined in this Contract which includes the ESFA's Confidential Information and/or the Contractor's Confidential Information including for the Contractor the information set out in Schedule 8 (Commercially Sensitive Information);
“Contract Date”	means the date this Contract is duly executed as stated above;
“Contract Period”	shall be the contract duration as set out in clause 2.1;
"Contracting Department"	any contracting Department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the ESFA;
"Contractor Personnel"	all employees, Agents, consultants, and contractors of the Contractor and/or of any Sub-Contractor engaged by the Contractor;
"Control"	means a person that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and " <b>Controls</b> " and " <b>Controlled</b> " shall be interpreted accordingly;
“Controller”, “Processor,” “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”	have the meaning given in the GDPR;
“Contractor’s Personnel List	means a list prepared and updated by the Contractor of all Contractor Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;
“Correctly Submitted Invoice”	means an invoice that is delivered in timing in accordance with the Contract; is for the correct sum; in respect of goods/services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, Contractor name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated address;

"Crown Body"	any department, office or agency of the Crown;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
"DPA 2018"	Data Protection Act 2018 as amended;
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Legislation"	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy. (iii) all applicable Law about the processing of personal data and privacy;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Department's Intellectual Property Rights"	means all Intellectual Property Rights comprised in or necessary for or arising from the performance of the Services;
"Digital Platform"	means the Contractor's technology and ICT systems including any portal that will be used to deliver any part of the Services;
"Disclosure and Barring Service or DBS"	the Home Office sponsored safeguarding services that helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children;
"End Point Assessment"	means the independent assessment of the Apprentice's knowledge, skills and behaviours carried out by an End-Point Assessment Organisation, after the Apprentice has passed their gateway assessment, to confirm that they have met the requirements of any relevant Apprenticeship Standard.
"End Point Assessment Organisation"	means any organisation on the Register of End-Point Assessment Organisations which is selected by an Employer to carry out an End-Point Assessment.
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice

	issues by the Information Commissioner or relevant Government Department in relation to such regulations;
“the ESFA’s Contract Manager”	means Jeremy Barlow.
“Existing IPR”	any and all IPR that are owned by or licensed to either Party which are or have been developed independently of the Contract whether prior to the date of the Contract or otherwise.
“Exit Plan”	the plan prepared by the Contractor in accordance with clause 15.11 setting out the Contractor’s methodology for achieving an orderly transition of the Services from the Contractor to the ESFA or a Successor Contractor on the expiry or termination of this Contract;
“Expiry Date”	means the final date for completion of work, as indicated in the implementation plan, being the last day of the Contract Period unless the Contract Period is extended in accordance with Clause 2;
“Extension Period”	shall have the meaning given to it in clause 2.2;
“FOIA”	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
“Force Majeure”	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take reasonable preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other catastrophe, natural or man-made, but excluding: <ul style="list-style-type: none"> <li>(a) any industrial action occurring within the Contractor’s or any of its Sub-Contractor’s organisation, or otherwise involving the Contractor Staff; or</li> <li>(b) the failure by any Sub-Contractor of the Contractor to perform its obligations under any Sub-Contract.</li> </ul>

“Framework Agreement”	means the Framework Agreement dated 01/06/2021 between the ESFA and the Contractor which was awarded under Regulation 33 of the Regulations and under which the Services are being called off;
“Future Transfer Date”	means the date of termination or Expiry Date of this Contract;
“GDPR”	the General Data Protection Regulation (Regulation (EU) 2016/679);
“Good Industry Practice”	that degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or any Sub-Contractor under the same or similar circumstances;
“Her Majesty’s Government”	means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant, or officer of such Government;
“ICT”	means information and communications technology;
“Implementation Plan”	means the Contractor’s delivery plan submitted with the Contractor’s Quotation for the Contract as included in Schedule 5;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
“IPR Claims”	any claim against the ESFA of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPRs used by or on behalf of the Contractor (including by a Sub-Contractor) in relation to the delivery of the Services save for any such claim to the extent that it is caused by any use by or on behalf of the ESFA of any IPRs that are relevant to this Contract in combination with any item not supplied or recommended by the Contractor pursuant to this Contract or for a purpose not reasonably to be inferred from the Specification or the provisions of this Contract
"Intellectual Property Right"	means any copyright, rights in designs, database rights, domain names, trademarks, service marks, patents or any applications for any of the foregoing, know-how or similar rights or obligations (whether registerable or not) including Moral Rights as defined in Chapter IV of the Copyright, Designs and Patents Act 1988;

“LED”	Law Enforcement Directive (Directive (EU) 2016/680);
“Milestone”	means an activity, or series of activities or tasks or deliverables associated with the delivery of the Service that the Contractor is required to meet, achieve, complete or deliver by a stated date;
“Milestone Date”	means the date by which the Contractor shall achieve the related Milestone;
“New IPR”	IPR in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) data base schemes;
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
“Property”	means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract;
“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
“Quotation”	means the Contractor’s offer submitted to the ESFA to undertake this Contract
“Regulatory Bodies”	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the ESFA and " <b>Regulatory Body</b> " shall be construed; accordingly,
“Register”	means the Register of End Point Assessment Organisations maintained by the ESFA;
“the Regulations”	means the Public Contracts Regulations 2015;
“Relevant Legislation”	means any statute or regulations or the EC Treaty (or any directives or regulations made under them);

“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which the ESFA receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by the ESFA internally or by any third party.
“Replacement Supplier”	any third-party provider of Replacement Services appointed by the ESFA from time to time (or where the ESFA is providing Replacement Services for its own account, the ESFA)
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
“Required Insurances”	means the insurances as set out in clause 9.7;
“Serious Breach”	<p>means:</p> <ul style="list-style-type: none"> <li>(a) any breach referred to as a Serious Breach in the Contract; and/or</li> <li>(b) any breach or breaches which adversely, materially, or substantially affect the performance or delivery of the Services in part or in full, or the provisions of a safe, healthy and supportive learning environment. Serious Breach</li> </ul> <p>includes but is not limited to:</p> <ul style="list-style-type: none"> <li>(i) a breach of security that adversely affects the Personal Data or privacy of an individual; and</li> <li>(ii) failure to comply with Law, or acts or omissions by the Contractor that endanger the health or safety of others;</li> </ul>
“the Services”	means the services to be performed by the Contractor as described in Schedule 1;
“Service Failure”	means the failure of the Contractor to meet SLAs, KPIs and Milestones as described in this Contract;
"SME"	means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and

any subsequent revisions;

“Staffing Information”

in relation to all persons identified on any Contractor’s Personnel List, such information as the ESFA may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit-sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

any other “employee liability information” as such term is defined in regulation 11 of TUPE;

“Sub-Contract”

means a contract between two or more suppliers, at any stage of remoteness from the ESFA in a Sub-Contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract;

"Sub-Contractor"	the third party with whom the Contractor enters into a Sub-Contract or its servants or Agents and any third party with whom that third party enters into a Sub-Contract or its servants or Agents;
"Sub-processor"	any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract;
"Successor Contractor"	means the Contractor that delivers services that are substantially the same as the Services after the expiry or termination of the Contract;
"Termination Date"	means the date set out in a termination notice on which this Contract (or a part of it as the case may be) is to terminate;
"Transfer of Undertakings (Protection of Employment) Regulations 2006 or TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time;
"Transferring Contractor Employees"	those employees of the Contractor and/or the Contractor's Sub-Contractors to whom TUPE will apply on the Relevant Transfer Date;
"Variation"	A change to the terms of this Contract agreed in accordance with Schedule 4;
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

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

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

## **2. COMMENCEMENT AND CONTINUATION**

2.1. The Contractor shall commence the Services on the Contract Date and, subject to clause 12 (Termination) shall complete the Services on or before the Expiry Date.

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

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

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

3.1. The Contractor shall promptly and efficiently deliver the Services in accordance with the provisions set out in Schedule 1 (The Specification) and in accordance with the Implementation Plan set out in Schedule 5.

- 3.2. The Contractor shall comply with the accounting and performance measures set out in Schedule 2 (Pricing and Performance Measures).
- 3.3. The Contractor shall implement quality management arrangements and comply with the Quality Assurance requirements set out in Schedule 6 and in the Specification to ensure the Services are delivered to a consistent and high standard. The Contractor shall notify the ESFA as soon as practicable in the event it becomes aware of any matter(s) which may affect the quality of the Services.
- 3.4. The Contractor shall attend meetings relating to the Services and the Contractor's performance with the ESFA as set out in the Specification and this Contract. The Contractor is not paid separately for attending such meetings unless expressly set out in the Call Off Order.
- 3.5. The Contractor shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.
- 3.6. In entering into this Contract, the Contractor is confirming that:
  - 3.6.1. it has read and understood the ESFA's expectations of all Services as set out in the Government's Contractor Code of Conduct at <https://www.gov.uk/government/publications/Contractor-code-of-conduct> and the Contractor will be deliver the Services in accordance with the Contractor Code; and
  - 3.6.2. it will deliver the Services by reference to the Contractor Code as dated February 2019 and thereafter as updated from time to time.
- 3.7. If required by the ESFA in writing, the Contractor shall update the Implementation Plan, as set out at Schedule 5 (Implementation Plan) and submit it to the ESFA, for its approval within 10 (ten) Working Days of the Contract Date.
- 3.8. The Contractor shall work co-operatively with the ESFA and shall commit to supporting continuous improvement for the Contract Period by sharing knowledge and experiences with the ESFA, and the other Framework Suppliers.
- 3.9. **NOT USED**[On or before the Contract Date the Contractor shall procure the execution of a Guarantee by the Guarantor in favour of the ESFA substantially in the form annexed at Schedule 9 (Parent Company Guarantee) to the Framework Agreement.]

#### **4. DEPARTMENT'S OBLIGATIONS**

- 4.1. The ESFA will comply with the payment provisions of Schedule 2: Part 1 (Pricing) provided that the ESFA has received full and accurate information and documentation as required by Schedule 2 to be submitted by the Contractor on the relevant Milestone Date for work completed to the satisfaction of the ESFA.

#### **5. THE SERVICES**

- 5.1. The Contractor shall deliver the Services as set out in this Contract to the ESFA from the Contract Date. For the avoidance of doubt, the Contractor will identify and enter into a separate contract for services with the training providers for whom an End Point Assessment is required before undertaking the relevant End Point Assessment.
- 5.2. The Contractor must maintain its listing on the Register for the Contract Period.

#### **6. MANAGEMENT**

- 6.1. The Contractor shall promptly comply with all reasonable requests or directions of the ESFA's Contract Manager in respect of the Services.

- 6.2. The Contractor shall address any enquiries about procedural or contractual matters in writing to the ESFA's Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.
- 6.3. The Contractor's Key Personnel and Sub-Contractors (if applicable) are set out in Schedule 7 (Key Personnel and Sub-Contractors). The Contractor shall notify the ESFA of any changes to its Key Personnel or any proposed change of Sub-Contractors. In relation to any proposed change of Sub-Contractor the Contractor shall comply with the provisions of clauses 7.6 to 7.8 (Contractor's Employees and Sub-Contractors) and clause 21 (Assignment and Sub-Contracting) .

## **7. CONTRACTOR'S EMPLOYEES AND SUB-CONTRACTORS**

- 7.1. The appointment by the Contractor of Sub-Contractors shall be subject always to the requirements of clause 21 (Assignment and Sub-Contracting). Where the Contractor does enter into any Sub-Contract the provisions of clauses 7.2 to 7.10 shall apply.
- 7.2. Where the Contractor enters into a contract with one or more supplier for the purpose of performing its obligations under the Contract (the "Sub-Contractor") it shall ensure prompt payment of the Sub-Contractor in accordance with this clause 7.1. Unless otherwise agreed by the ESFA in writing, the Contractor shall ensure that any contract requiring payment to a Sub-Contractor shall provide for undisputed sums due to the Sub-Contractor to be made within 30 calendar days from the receipt of a valid invoice.
- 7.3. The Contractor shall comply with clause 7.2 and shall provide, at the ESFA's request, sufficient evidence to demonstrate compliance.
- 7.4. The Contractor shall take all reasonable steps to satisfy itself that the Contractor Personnel it engages are suitable in all respects to perform the Services.
- 7.5. The Contractor shall give to the ESFA, if so requested a list of all persons who are or may be at any time directly concerned with the performance of this Contract specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the ESFA may reasonably require.
- 7.6. If the ESFA notifies the Contractor that it reasonably considers that a Sub-Contractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Contract or is otherwise not acceptable to the ESFA (acting reasonably), then the Contractor shall, as soon as is reasonably practicable, take all such steps as the ESFA considers necessary to remedy the situation or, if so reasonably required by the ESFA, shall remove the said Sub-Contractor from providing the Services and shall provide a suitable replacement (at no cost to the ESFA).
- 7.7. The Contractor shall take all reasonable steps to avoid changes of Sub-Contractors assigned to and accepted to provide the Services under the Contract except whenever changes are unavoidable or of a temporary nature. The Contractor shall give immediate notice in writing to the ESFA's Contract Manager of proposals to change Sub-Contractors.
- 7.8. The Contractor shall immediately notify the ESFA if they have any concerns regarding the propriety of any of its Sub-Contractors in respect of work/services rendered in connection with this Contract.
- 7.9. The Contractor acknowledges that Key Contractor Staff and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Contractor Staff and Key Sub-Contractors listed in Schedule 7 as at the Contract Date.
- 7.10. The Contractor agrees that:

- 7.10.1. Key Contractor Staff shall not be released from supplying the Services without the ESFA's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 7.10.2. Any replacements of Key Contractor Staff or Sub-Contractors shall be subject to the ESFA's consent and shall be of at least equal status, experience and skills to Key Contractor Staff or Sub-Contractor(s) being replaced and be suitable for the responsibilities of that person or company in relation to the Services.
- 7.11. The ESFA shall not unreasonably withhold consent under clause 7.10. Such consent shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Contractor Staff or Key Sub-Contractors.
- 7.12. The ESFA may require the Contractor to remove any Key Contractor Staff or Sub-Contractors who the ESFA considers is in any respect unsatisfactory.
- 7.13. The ESFA shall not be liable for the cost of replacing any Key Contractor Staff or Sub-Contractors and the Contractor shall indemnify the ESFA against all Employment Liabilities that may arise in this respect.
- 7.14. The Contractor, its employees and Sub-Contractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
- 7.15. The Contractor shall both during and after the Contract Period indemnify the ESFA against all Employee Liabilities that may arise as a result of any claims brought against the ESFA by any person where such claim arises from any act or omission of the Contractor or any Contractor Personnel.

## **8. SAFEGUARDING**

- 8.1. The Contractor shall make arrangements for ensuring that the Services are provided with a view to safeguarding and promoting the welfare of children and vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) receiving education or training. In doing so, the Contractor shall have regard to any guidance published, from time to time, by the Secretary of State for Education, which sets out the expectations in relation to safeguarding practice within schools. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this Agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Contract.
- 8.2. The Contractor must carry out appropriate Disclosure and Barring Service checks on all applicants including those from outside the UK for employment where such applicants would be employed to work in regulated activity relating to children or vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) if successful and must seek additional information about an applicant's conduct.
- 8.3. The Contractor shall not employ or engage, or continue to employ or engage, any person who is subject to a prohibition order made under section 141B of the Education Act 2002 to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).
- 8.4. The Contractor shall, in circumstances where it sub-contracts the management and / or delivery of the Services under this Contract, ensure that the content of this clause 8 is included in its contract with Sub-Contractors.

- 8.5. The Contractor and its Sub-Contractors must be able to demonstrate that they have robust record-keeping procedures in respect of safeguarding through checks on record keeping undertaken.
- 8.6. A breach by the Contractor and / or its Sub-Contractors of this clause 8 shall constitute a Serious Breach of the Contract.

## **9. INTELLECTUAL PROPERTY RIGHTS (IPR)**

- 9.1. Each Party keeps ownership of its own Existing IPR.
- 9.2. Pursuant to clause 2.1 the Contractor gives the ESFA a non-exclusive, perpetual, royalty-free, irrevocable, transferable UK-wide licence to use, change and sub-license the Contractor's Existing IPR to enable it to both:
  - 9.2.1. receive and use the Services;
  - 9.2.2. make use of the Services by a Replacement Supplier;and the ESFA gives the Contractor and its subcontractor a licence to use the ESFA's Existing IPR for the purpose of fulfilling its obligations during the Contract Period.
- 9.3. Any New IPR created under this Contract is owned by the ESFA. The ESFA grants to the Contractor for the duration that the Contractor is registered on the Register a non-exclusive, royalty-free, UK-wide licence to use the ESFA's Existing IPR and New IPR for the purpose of using the Assessment Materials created under this Contract for the sole purpose of the delivery of End Point Assessments.
- 9.4. Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 9.5. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, other than as set out in this clause or as agreed in writing.
- 9.6. The Contractor shall indemnify the ESFA against all IPR Claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right.
- 9.7. The Contractor hereby waives any Moral Rights as defined at Chapter IV of the Copyright, Designs and Patents Act 1988.
- 9.8. The Contractor warrants:
  - 9.8.1. that the Contractor's Intellectual Property Rights comprise its own original work including where its Intellectual Property Rights were created by or on behalf of the Contractor;
  - 9.8.2. that the ESFA's Intellectual Property Rights have not and will not be copied wholly or in part from any other work or material;
  - 9.8.3. that the use of or exercise by the Contractor of the ESFA's Intellectual Property Rights and the Background Intellectual Property will not infringe the rights of any third party;
  - 9.8.4. that the Contractor has not granted or assigned any rights of any nature in the ESFA's Intellectual Property Rights to any third party except to its Sub-Contractors as appropriate.

## **10. WARRANTY AND INDEMNITY**

- 10.1. The Contractor warrants to the ESFA that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel using Good Industry Practice. The ESFA will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.
- 10.2. Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Contract, then the ESFA shall be entitled, where appropriate to:
  - 10.2.1. require the Contractor promptly to re-perform or replace the relevant part of the Services without additional charge to the ESFA; or
  - 10.2.2. if the ESFA considers it would be impracticable or inappropriate to require the Contractor to take action in accordance with clause 10.2.1, the ESFA may assess the cost of remedying the failure ("the Assessed Cost") and deduct from any sums due to the Contractor the Assessed Cost for the period that such failure continue
  - 10.2.3. assess the cost of remedying the failure ("the assessed cost") and to deduct from any sums due to the Contractor the Assessed Cost for the period that such failure continues.
- 10.3. Neither Party limits its liability for:
  - 10.3.1. death or personal injury caused by its negligence, or that of its employees, agents or sub- contractors (as applicable);
  - 10.3.2. fraud or fraudulent misrepresentation by it or its employees;
  - 10.3.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 10.3.4. any liability to the extent it cannot be limited or excluded by Law.
- 10.4. The Contractor's liability in respect of the indemnities in clause 7.15 (Employment Liability), clause 18 (Tax Indemnity), clause 9.6 (IPRs Indemnity) shall be unlimited.
- 10.5. Subject to clauses 10.3 and 10.4 (Unlimited Liability) and clauses 10.8 (Consequential Losses):
  - 10.5.1. the Contractor's aggregate liability in respect of loss of or damage to the ESFA Premises or other property or assets of the ESFA (including technical infrastructure, assets or equipment but excluding any loss or damage to the ESFA's Data or any other data) that is caused by Defaults of the Contractor occurring in each and any Contract Year shall in no event exceed £10 million;
  - 10.5.2. the Contractor's aggregate liability in respect of loss of or damage to Department Data or breach of the Data Protection Legislation that is caused by Default of the Contractor occurring in each and any Contract Year shall in no event exceed £10 million; and
  - 10.5.3. the Contractor's aggregate liability in respect of all other Losses incurred by the ESFA under or in connection with this Contract as a result of Defaults by the Contractor shall in no event exceed:

- 10.5.3.1. in relation to Defaults occurring during the Contract Period, an amount equal to £5 million; and
  - 10.5.3.2. in relation to Defaults occurring after the end of the Contract Period, an amount equal to £5 million.
- 10.6. Subject to clauses 10.3 and 10.4 (Unlimited Liability) and clause 10.8 (Consequential Losses) and without prejudice to the ESFA's obligation to pay the Charges as and when they fall due for payment the ESFA's aggregate liability in respect of all Losses incurred by the Contractor under or in connection with this Contract shall in no event exceed the Total Contract Value.
- 10.7. Subject to clauses 10.3, and 10.4 (Unlimited Liability) and clause 10.8 neither Party shall be liable to the other Party for:
  - 10.7.1. any indirect, special or consequential Loss; or
  - 10.7.2. any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 10.8. Notwithstanding clause 10.7 but subject to clause 10.5, the Contractor acknowledges that the ESFA may, amongst other things, recover from the Contractor the following Losses incurred by the ESFA to the extent that they arise as a result of a Default by the Contractor:
  - 10.8.1. any additional operational and/or administrative costs and expenses incurred by the ESFA, including costs relating to time spent by or on behalf of the ESFA in dealing with the consequences of the Default;
  - 10.8.2. any wasted expenditure or charges;
  - 10.8.3. the additional cost of procuring Replacement Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
  - 10.8.4. any compensation or interest paid to a third party by the ESFA; and
  - 10.8.5. any fine or penalty incurred by the ESFA pursuant to Law and any costs incurred by the ESFA in defending any proceedings which result in such fine or penalty.
- 10.9. Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.
- 10.10. The ESFA's total liability to the Contractor under this Contract shall be limited to paying the Charges in accordance with schedule 2 (Pricing) and complying with any other contract provision in the Contract that requires a payment to be made by the ESFA.
- 10.11. Without prejudice to its liability to indemnify the ESFA under this Contract the Contractor shall take out and maintain in force or procure the taking out and maintenance of the Required Insurances and any other insurances as may be required by law. The Required Insurances shall be effective in each case no later than the date on which the relevant risk commences.
- 10.12. The Required Insurances referred to in clause 10.11 shall amount to:
  - 10.12.1. at least five million pounds (£5 million) in respect of public liability cover in respect of each and every occurrence;

- 10.12.2. at least five million pounds (£5 million) in respect of employer's liability cover in respect of each and every occurrence; and
  - 10.12.3. at least two million pounds (£2 million) in respect of professional indemnity cover in respect of each and every claim;
- 10.13. The ESFA may review the minimum indemnity limits specified for the Required Insurances in clause 10.12 on an annual basis. Any Change that is required to the minimum indemnity limits as a result of the ESFA's review shall be implemented in accordance with the Change Control Procedure.
- 10.14. The Contractor shall provide to the ESFA by each anniversary of the Contract Date during the Contract Period and at other times on request, evidence confirming that the Required Insurances are and remain in place.

## **11. FINANCIAL DISTRESS**

- 11.1. The Parties shall comply with the provisions of Schedule 3 (Financial Distress) in relation to the assessment of financial standing of the Contractor and the consequences of a change to that financial standing.
- 11.2. In the event that a Financial Distress Event occurs the provisions of Schedule 3 (Financial Distress) shall apply.

## **12. TERMINATION**

- 12.1. This Contract may be terminated on notice by the ESFA giving to the Contractor at least 90 days' notice in writing setting out the reasons for the termination.
- 12.2. If the ESFA terminates the Contract under clause 12.1 the ESFA shall make no further payments to the Contractor. Services supplied by the Contractor prior to termination where the payment has yet to be made by the ESFA.
- 12.3. In the event of a Serious Breach of this Contract by either party which can be remedied, the other party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the party not in breach may terminate this Contract with immediate effect by notice in writing.
- 12.4. If the ESFA holds the view, acting reasonably, that the Contractor has committed a Serious Breach of the Contract that it would pose a risk to the health and safety of children or vulnerable adults to permit it to continue to deliver the Services, it may require the Contractor to suspend delivery of the Services pending further investigations.
- 12.5. This Contract may be terminated by the ESFA with immediate effect by notice in writing if at any time:
- 12.5.1. the Contractor commits a Serious Breach which cannot be remedied.
  - 12.5.2. the Contractor fails to maintain its listing on the Register;
  - 12.5.3. the ESFA terminates the Contractor's listing on the Register;
  - 12.5.4. in England and Wales, a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or it makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors;
  - 12.5.5. in Scotland, if the Contractor becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) act 1985;

- 12.5.6. where the Contractor is a firm or a number of persons acting together in any capacity (including as trustees), any event referred to in Sub-Clauses 12.5.1 or 12.5.4 occurs in respect of any partner in the firm or any of those persons (including any trustees);
  - 12.5.7. the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct;
  - 12.5.8. the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;
  - 12.5.9. the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to the payment of Social Security contributions;
  - 12.5.10. the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to payment of taxes;
  - 12.5.11. the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the ESFA in or pursuant to this Contract;
  - 12.5.12. any of the provisions of paragraph 4 of Schedule 3 (Financial Distress) have arisen;
- 12.6. Nothing in this clause 12 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

**Serious Breach due to not achieving a Milestone Date in a Contract**

- 12.7. If the Contractor has not achieved a Milestone Date, the Contractor would have committed a Serious Breach of this Contract and clauses 12.3 or 12.5.1 shall apply to this and any other Contract it has been awarded under the Framework Agreement.
- 12.8. For the avoidance of doubt, a failure to meet the Milestone Date associated with Milestone 2 will be treated as a Serious Breach that is not capable of remedy.

**13. STATUS OF CONTRACTOR**

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

**14. CONFIDENTIALITY**

- 14.1. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
  - 14.1.1. treat the other party's Confidential Information as confidential and safeguard it; accordingly, and
  - 14.1.2. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 14.2. Clause 14.1 shall not apply to the extent that:
  - 14.2.1. such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code

- of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 15 (Freedom of Information);
- 14.2.2. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 14.2.3. such information was obtained from a third party without obligation of confidentiality;
  - 14.2.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - 14.2.5. it is independently developed without access to the other party's Confidential Information.
- 14.3. The Contractor may only disclose the ESFA's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Project and who need to know the information and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
  - 14.4. The Contractor shall not, and shall ensure that the Contractor Personnel do not, use any of the ESFA's Confidential Information received otherwise than for the purposes of this Contract.
  - 14.5. The Contractor shall ensure that its employees, servants or such professional advisors or consultants are aware of the Contractor's obligations under this Contract.
  - 14.6. Nothing in this Contract shall prevent the ESFA from disclosing the Contractor's Confidential Information:
    - 14.6.1. on a confidential basis to any Central Government Body for any proper purpose of the ESFA or of the relevant Central Government Body;
    - 14.6.2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
    - 14.6.3. to the extent that the ESFA (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
    - 14.6.4. on a confidential basis to a professional adviser, consultant, Contractor, or other person engaged by any of the entities described in clause 14.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
    - 14.6.5. on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or
    - 14.6.6. on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.
  - 14.7. The ESFA shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Department, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to this clause is made aware of the ESFA's obligations of confidentiality.
  - 14.8. Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

- 14.9. The parties acknowledge that, except for any information that is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The ESFA shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 14.10. Subject to clause 14.9, the Contractor hereby gives its consent for the ESFA to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 14.11. The ESFA may consult with the Contractor to inform its decision regarding any redactions but the ESFA shall have the final decision in its absolute discretion.
- 14.12. The Contractor shall assist and cooperate with the ESFA to enable the ESFA to publish this Contract.

## **15. FREEDOM OF INFORMATION**

- 15.1. The Contractor acknowledges that the ESFA is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the ESFA to enable the ESFA to comply with its information disclosure obligations.
- 15.2. The Contractor shall and shall ensure that its Sub-Contractors shall:
  - 15.2.1. transfer to the ESFA all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
  - 15.2.2. provide the ESFA with a copy of all Information in its possession, or power in the form that the ESFA requires within five Working Days (or such other period as the ESFA may specify) of the ESFA's request; and
  - 15.2.3. provide all necessary assistance as reasonably requested by the ESFA to enable the ESFA to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 15.3. The ESFA shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 15.4. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the ESFA.
- 15.5. The Contractor acknowledges that (notwithstanding the provisions of clause 13) the ESFA may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:
  - 15.5.1. in certain circumstances without consulting the Contractor; or
  - 15.5.2. following consultation with the Contractor and having taken their views into account;
- 15.6. provided always that where clause 15.5.1 applies the ESFA shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

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

## **16. AUDIT**

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

## **17. TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION**

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

- 17.2. If to fulfil the ESFA's request under clause 17.1 the Contractor requires resources:

- 17.2.1. not normally accounted for in delivering the Services; or
- 17.2.2. no accounted for in the Charges; or
- 17.2.3. after the Expiry Date;

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

- 17.3. Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the Required Information, documents and data, if any, referred to in clause 17.8.

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

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

- 17.6. The Contractor will:

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

- 17.6.2. keep the Staffing Information in the Contractor Personnel List updated and will disclose it to the ESFA and if applicable a Replacement Supplier at regular intervals in respect of each employee whom the Contractor reasonably believes will be a Transferring Contractor Employee provided that prior to doing so the Replacement Supplier nominated by the ESFA shall have executed in writing a confidentiality undertaking in favour of the Contractor;

- 17.6.3. make reasonable endeavours to assist the Replacement Supplier to

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

- 17.7. Within a period of 21 days following the Expiry Date or Termination Date the Contractor shall provide to the ESFA or the Successor Contractor in writing the updated Staffing Information in relation to Transferring Contractor Employees.
- 17.8. In the event that the ESFA or the Replacement Supplier incurs costs, liabilities or expenditure in respect of Transferring Contractor Employees which is greater than would have been the case if the Required Information supplied by the Contractor had been accurate and complete, then such (net) greater costs, liabilities or expenditure shall be deemed to be costs suffered or incurred by the ESFA or Replacement Supplier and included within the indemnity provided by the Contractor.
- 17.9. The ESFA or Replacement Supplier shall be entitled to recover from the Contractor in full any legal, accountancy and other costs actually and reasonably incurred by the ESFA or Replacement Supplier in connection with the costs and liabilities indemnified by the Contractor.
- 17.10. This clause 17 shall continue in effect for six months following the expiry or termination of this Contract.

#### **Exit Plan & Handover**

- 17.11. Further to the requirements of this clause 17 and in accordance with Schedule 1 (The Specification) the Contractor shall, within ten (10) Working Days of the Contract Date prepare and submit to the ESFA and shall thereafter maintain, an Exit Plan.
- 17.12. The Exit Plan shall set out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the ESFA and/or its Replacement Supplier at the end of the Contract Period or on the earlier termination of any part of the Contract or cessation of the provision of any part of the Services by the Contractor.
- 17.13. The Exit Plan should include provision dealing with the handing over to the ESFA no later than the Expiry Date or Termination Date as relevant, the following:
  - 17.13.1. Assessment Materials;
  - 17.13.2. Draft Assessment questions and scenarios;
  - 17.13.3. Scoring methodology;
  - 17.13.4. Training materials for upskilling assessors and moderators;
  - 17.13.5. Contact details for Sub Contractors that have been identified or engaged to support the delivery of Services under this Framework Agreement;
  - 17.13.6. In relation to assessors on the Sub Contracting list, contact details, CV including their suitability to deliver the Services.
- 17.14. Within thirty (30) days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 26 (Dispute Resolution).
- 17.15. The Contractor shall co-operate fully with the ESFA during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

- 17.16. Within ten (10) Working Days of being requested by the ESFA, the Contractor shall transfer to the ESFA, or any person designated by the ESFA, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the ESFA.
- 17.17. The Contractor shall co-operate fully with the ESFA in order to enable an efficient and detailed knowledge transfer from the Contractor to the ESFA or any other Replacement Supplier at the end of the Contract Period or on the earlier termination of any part of the Contract or cessation of the provision of any part of the Services by the Contractor and shall provide the ESFA free of charge with full access to Contractor Staff, copies of all documents, reports, summaries and any other information requested by the ESFA. The Contractor shall comply with the ESFA's request for information no later than fifteen (15) Working Days from the date that that request was made.

## **18. TAX INDEMNITY**

- 18.1. Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration. Where the ESFA has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs (HMRC) the ESFA reserves the right to calculate Income Tax and pay it to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.
- 18.2. Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration. Where the ESFA has deemed the Contractor to be an Off-Payroll Contractor as defined by HMRC the ESFA reserves the right to calculate primary (employee) National Insurance contributions (NICs) and pay them to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.
- 18.3. The ESFA may, at any time during the Contract Period, ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 18.1 and 18.2 above or why those clauses do not apply to it.
- 18.4. A request under clause 18.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 18.5. The ESFA may terminate this Contract if:
- 18.5.1. in the case of a request mentioned in clause 18.3 above if the Contractor:
    - 18.5.1.1. fails to provide information in response to the request within a reasonable time, or
    - 18.5.1.2. provides information which is inadequate to demonstrate either how the Contractor complies with clauses 18.1 and 18.2 above or why those clauses do not apply to it;
  - 18.5.2. in the case of a request mentioned in clause 18.4 above, the Contractor fails to provide the specified information within the specified period, or;
  - 18.5.3. it receives information which demonstrates that, at any time when clauses 18.1 and 18.2 apply, the Contractor is not complying with those clauses.
- 18.6. The ESFA may supply any information which it receives under clause 18.3 to the Commissioners of HMRC for the purpose of the collection and management of revenue

for which they are responsible.

- 18.7. The Contractor warrants and represents to the ESFA that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract. The Contractor shall promptly and regularly pay all National Insurance Contributions due from it as a self-employed person and shall account to the HMRC for all taxes due from it in respect of the payments made to it under this Contract.
- 18.8. If, notwithstanding clause 18.7 the HMRC and/or any other appropriate agency consider that the Contractor is an employee of the ESFA for the purposes of tax and/or national insurance contributions; then the ESFA shall be entitled to terminate this Contract immediately and deduct from the payments payable to the Contractor under the terms of this Contract, such sums as the HMRC and/or other agencies require in respect of income tax and employee national insurance contributions. The deduction of such tax and national insurance contributions will not affect the status of the Contractor as self-employed for all other purposes.
- 18.9. Without prejudice to the provisions of clause 18.8 above, the Contractor shall indemnify the ESFA against any liability, assessment or claim made by the HMRC or any other relevant Department arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by the ESFA in connection with any such assessment or claim.
- 18.10. The Contractor authorises the ESFA to provide the HMRC and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not the ESFA is obliged as a matter of law to comply with such request.
- 18.11. The Contractor shall register for value added tax if and when required by law and shall promptly notify the ESFA for Work and Pensions of its liability for Class 2 and, where appropriate, Class 4 national insurance contributions.

## **19. DATA PROTECTION**

- 19.1. The Parties do not anticipate that any Personal Data will be processed by the Contractor under this Contract. If Personal Data is to be processed under this Contract, the Parties shall agree a Variation in accordance with clause 20.
- 19.2. The Contractor shall at all times comply with Data Protection Legislation,
- 19.3. The Contractor shall allow for audits of its Data Processing activity by the ESFA or the ESFA's designated auditor.
- 19.4. The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 19.5. The Contractor shall remain fully liable for all acts or omissions of any sub-processor.
- 19.6. The Contractor shall indemnify the ESFA against any liability, assessment or claim made by the Information Commissioner's Office or any other relevant Department or Agency arising out of the performance by the parties of their obligations under this Contract and any costs, expenses, penalty fine or interest incurred or payable by the ESFA in connection with any such assessment or claim.
- 19.7. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The ESFA may on not less than thirty (30) Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **20. AMENDMENT AND VARIATION**

- 20.1. No amendment or Variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Contractor shall comply with any formal procedures for amending or varying contracts which the ESFA may have in place from time to time.
- 20.2. In considering any amendment or Variation to this Contract, the parties shall use the Change Control Procedure as set out in Schedule 4 (Change Control Procedure).

## **21. ASSIGNMENT AND SUB-CONTRACTING**

- 21.1. The benefit and burden of this Contract may not be assigned or Sub-Contracted in whole or in part by the Contractor without the prior written consent of the ESFA save as expressly set out in clause 19.2. Such consent may be given subject to any conditions which the ESFA considers necessary. The ESFA may withdraw its consent to any Sub-Contractor where it no longer has reasonable grounds to approve of the Sub-Contractor or the Sub-Contracting arrangement and where these grounds have been presented in writing to the Contractor.
- 21.2. The Contractor may enter into Sub-Contracts for the delivery of general services that indirectly enable the Contractor to perform the Services without the requirement to seek the ESFA's prior consent as set out in clause 19.1.
- 21.3. Where the ESFA has consented to the appointment of a Sub-Contractor, pursuant to clause 21.1, the Contractor shall, as soon as reasonably practicable following a request from the ESFA provide to the ESFA a copy of the Sub-Contract entered into between the Contractor and the Sub-Contractor which should pass down to the Sub-Contractor in terms which are the same or substantially similar to the provisions in this Contract as is relevant for the delivery of the Services under the Sub-Contract.
- 21.4. Where the ESFA has consented to an assignment pursuant to clause 21.1 the Contractor shall evidence the assignment in writing to the ESFA and provide a copy of the assignment document on request.
- 21.5. The Contractor shall not terminate or materially amend the terms of any Sub-Contract whose value exceeds 25% of the Total Contract Value without obtaining the ESFA's prior written consent.
- 21.6. The ESFA may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the ESFA's rights of termination pursuant to clause 12 unless the Sub-Contractor can remedy the breach to the ESFA's satisfaction with five (5) Working Days of receipt by the Contractor of written notice from the ESFA requiring the Sub-Contract to be terminated.
- 21.7. The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 21.8. The ESFA accepts no liability to the Contractor in relation to a decision by the ESFA to consent to the appointment of a Sub-Contractor by the ESFA or to an assignment and the Contractor shall hold the ESFA harmless in relation to any such decisions.
- 21.9. If the ESFA believes there are:
  - 21.9.1. Compulsory grounds for excluding a Sub-Contractor pursuant to Regulation 57 of the Regulations; or
  - 21.9.2. Non-compulsory grounds for excluding a Sub-Contractor pursuant to Regulation 57 of the Regulations;the ESFA may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such a requirement.

21.10. The ESFA reserves the right to undertake due diligence in relation to any Sub-Contractor in accordance with making a decision under clause 21.8.

## **22. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

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

## **23. WAIVER**

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

## **24. FORCE MAJEURE**

24.1. If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 24.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.

24.2. If either Party is prevented from performance of its obligations for a continuous period in excess of 3 months, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

24.3. The Party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use reasonable endeavours to end Force Majeure or to find solutions by which the Contract may be performed despite the Force Majeure.

## **25. NOTICES**

25.1. Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first-class post or (where being sent to an address in a different country to where posted) airmail, or e-mail, addressed to the recipient at its registered office or its address (or such other address, or e-mail address as may be notified in writing from time to time).

25.2. The notice, demand or communication shall be deemed to have been duly served:

25.2.1. if delivered by hand, when left at the proper address for service;

25.2.2. if given or made by prepaid first-class post 48 hours after being posted or in the case of airmail 14 days after being posted;

25.2.3. if made by e-mail, at the time of transmission, dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message or, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Working Day (such times being local time at the address of the recipient).

## **26. DISPUTE RESOLUTION**

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

## **27. DISCRIMINATION**

- 27.1. The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 27.2. The Contractor shall take all reasonable steps to secure the observance of clause 27.1 by all servants, employees or Agents of the Contractor and all Contractors and Sub-Contractors employed in the execution of the Contract.

## **28. LAW AND JURISDICTION**

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

## **29. PAYMENTS AND INVOICING**

- 29.1. Except where otherwise expressly stated in the Contract the only payments to be paid by the ESFA for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 29.2. In consideration for the provision of the Services the ESFA shall pay the Charges in accordance with the Schedule 2 subject to the receipt of correct invoices pursuant to clause 29.9 being issued by the Contractor.
- 29.3. The Contractor shall submit an invoice for the Milestone Reimbursement Payment in accordance with the provisions set out in Annex 1 to Schedule 2: Part 1 (Charges Payment Process).
- 29.4. The ESFA shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this paragraph, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 29.5. Except where otherwise expressly stated in Schedule 2 the Contractor shall not be entitled to increase the Charges or any rates identified in Schedule 2 throughout the Contract Period.
- 29.6. The Charges are exclusive of Value Added Tax ("VAT") and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The

Contractor should notify the ESFA of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.

- 29.7. Payment of the Charges by the ESFA shall be without prejudice to any rights the ESFA may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the ESFA by reason of such payment.
- 29.8. Invoices shall be submitted electronically by email to [REDACTED] by the relevant date as specified in Clause 29.3. The ESFA will not pay any invoices that are received after that relevant date.
- 29.9. There is no postal address. Paper invoices or supporting documents will not be accepted. All supporting documents must be sent digitally along with the invoice to [REDACTED].
- 29.10. An invoice is a Correctly Submitted Invoice if it is legible and includes:
  - 29.10.1. the date of the invoice;
  - 29.10.2. Contractor's full name and address;
  - 29.10.3. Contract reference number;
  - 29.10.4. Purchase Order number
  - 29.10.5. the charging period;
  - 29.10.6. a detailed breakdown of the appropriate Charges including deliverables, Milestone achieved (if applicable);
  - 29.10.7. days and times worked (if applicable);
  - 29.10.8. Service Credits (if applicable); and
  - 29.10.9. VAT if applicable.
- 29.11. The ESFA shall not pay an invoice which is not a Correctly Submitted Invoice.
- 29.12. The ESFA intends to pay Correctly Submitted Invoice within 5 days of receipt. Correctly Submitted Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 29.13. The ESFA shall not be responsible for any delay in payment caused by receipt of invoices which are not a Correctly Submitted Invoice and shall, within 10 Working Days of receipt, return to the Contractor for correction invoices that are not Correctly Submitted Invoices together with an explanation of the need for correction.
- 29.14. At the end of the Contract Period the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Contract Period which have not already been invoiced to the ESFA. The final invoice shall be submitted not later than 30 days after the end of the Contract Period.
- 29.15. The ESFA shall not be obliged to pay the final invoice until the Contractor has carried out all of the Services.
- 29.16. The Contractor shall ensure that a term is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.

29.17. If the ESFA disputes any amount specified in a Correctly Submitted Invoice, it shall pay such amount of the invoice as is not in dispute and within 10 Working Days notify the Contractor of the reasons for disputing the invoice. The ESFA may withhold the disputed amount pending resolution of the dispute.

29.18. The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Working Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 26 (Dispute Resolution).

**AS WITNESS** the hands of the parties:

**Authorised to sign for and on behalf of the Contractor**

Signature: 

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Name in CAPITALS: Robin Jackson

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Position in Organisation: Director of Assessment

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Address in full: Open Awards, Estuary Commerce Park, 17 De Havilland Drive, Speke, Liverpool, L24 8RN

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Date: Mar 6, 2023

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

Signature: [REDACTED]

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Name in CAPITALS: Sharon Hutchinson

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Position in Organisation: Commercial Lead

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Address in full: Department for Education

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Date: Mar 6, 2023

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## **SCHEDULE 1: THE SPECIFICATION**

### **SERVICE SPECIFICATION**

#### **EMERGENCY END-POINT ASSESSMENT ORGANISATION FRAMEWORK**

## **SPECIFICATION**

## Definitions

<b>Assessment development</b>	The preparation of materials and processes in order to deliver high quality End-point Assessment, in line with the specified Assessment Plan.
<b>Assessment Plan</b>	The Institute for Apprenticeships and Technical Education (IFATE) is legally required to set out the assessment arrangements for apprenticeships, it does this by an Assessment Plan. The plan is a legal document and sets out the ways in which an apprentice must be assessed at the end of their apprenticeship. The plan will include a variety of assessment methods.
<b>Call off contract</b>	The Model Call Off Contract set out in Schedule 2 of the Framework Agreement.
<b>Department</b>	Department refers to the Department for Education.
<b>Direct award</b>	The direct selection of a contractor from the framework for a contract for services.
<b>End-point assessment</b>	The independent assessment of the Apprentice's knowledge, skills and behaviours carried out by an End-Point Assessment Organisation, after the Apprentice has passed their gateway assessment, to confirm that they have met the requirements of any relevant Apprenticeship Standard.
<b>ESFA</b>	The Education and Skills Funding Agency through which the Department is acting in relation to this Contract.
<b>External Quality Assurance (EQA)</b>	The formal process of externally quality assuring the performance of an EPAO. This is carried out by an EQA Provider (EQAP).
<b>IFATE</b>	The Institute for Apprenticeships and Technical Education, responsible for approving new apprenticeship Standards, developing and reviewing assessment plans and overseeing External Quality Assurance.
<b>Materials</b>	Resources used for administering End-point Assessment, including, but not limited to, multiple choice question banks, mark schemes, proformas, scripts for interviews, training resources etc.
<b>Occupational route</b>	A group of related technical, higher technical and professional occupations where Apprenticeship Standards are offered. There are 15 occupational routes which reflect sectors as follows: Agriculture, Environmental and Animal Care; Business and Administration; Care Services; Catering and Hospitality; Construction; Creative and Design; Digital; Education and Childcare; Engineering and Manufacturing; Hair and Beauty; Health and Science; Legal, Finance and Accounting; Protective Services; Sales, Marketing and Procurement; Transport and Logistics.

<b>Provider</b>	An organisation, other than the Contractor, that receives funding directly from the ESFA for the off the job training of apprentices. This organisation contracts with EPAOs on behalf of the employer for EPA services.
<b>The Register</b>	<a href="#"><u>The Register of End-point Assessment Organisations. A list of organisations that have applied to the ESFA to deliver EPA and have been evaluated to have the right capability and capacity to do so. Applications to the register are for specific apprenticeship standards.</u></a>

## 1. SERVICE REQUIREMENTS

- 1.1. In the event of a gap in coverage for End-point Assessment of Apprentices, with Apprentices due for Assessment within three months, use of the Emergency EPA Framework will be triggered.
- 1.2. The Contractor will need to develop End-point Assessments for each Apprenticeship Standard that is required in an Order. The detail of the End-point Assessment that the Department requires is set out explicitly in the Assessment Plan which will be supplied with the Order. The ESFA will expect that the Contractor is able to offer assessment in all Occupational Routes and geographical locations in England.
- 1.3. It is a prerequisite of being appointed to the Framework Agreement that the Contractor should be Ofqual recognised or have applied for recognition by 31<sup>st</sup> July 2021. If this application for Ofqual recognition EPA has not been approved by 20<sup>th</sup> November 2021 (16 weeks from the 31<sup>st</sup> July), the ESFA will evaluate the work that the Potential Supplier has undertaken towards achieving Ofqual recognition. The ESFA reserves the right to remove the Framework Agreement Provider from the Framework Agreement if they have not satisfactorily done all that they can to achieve recognition.
- 1.4. Ofqual recognised Framework Agreement Providers must apply to expand their scope of recognition to include any Standards which they have been selected to deliver via the Framework. Being selected to deliver a Standard via a Call-Off Contract does not equate to automatic expansion of Ofqual recognition and Potential Suppliers must apply for expansion through the usual processes. Potential Suppliers on the Framework Agreement will not be given preferential treatment on their Ofqual expansion application.
- 1.5. Notwithstanding paragraph 1.3, the Contractor will only be offered a Call-off Contract for an Ofqual Standard if they are Ofqual recognised.

## 2. MATERIALS

- 2.1. The Contractor will within 12 weeks from award of the Call-off Contract:
  - 2.1.1. Design and develop the Materials required to deliver the assessment methods defined in the Assessment Plan and needed to carry out the End-Point Assessment. For example, test questions, project topics or interview scripts;
  - 2.1.2. Ensure that question banks for tests are sufficiently varied to protect against predictability;
  - 2.1.3. Develop mark scheme materials;
  - 2.1.4. Develop proformas for assessors to complete records of assessment;
  - 2.1.5. Recruit and train assessors and staff so that they are competent to deliver the End-point Assessment;
  - 2.1.6. The Contractor must apply for Ofqual Expansion to cover the new Standards required within 5 working days of accepting the Call-off Contract.
  - 2.1.7. The Contractor shall provide practice materials to the Training Provider to help the apprentice prepare for their assessment.
  
- 2.2. The ESFA requires the Contractor to engage and contract with named Providers to assess Apprentices. This will involve booking and delivering End Point Assessments through business-as-usual processes, including:
  - 2.2.1. Engaging in the booking of Apprentice Assessments in good time, as set out in the Process Document (appendix a) and in accordance with requirements in the Assessment Plan;
  - 2.2.2. Supplying evidence of booked End Point Assessments to the ESFA;
  - 2.2.3. Checking and verifying that the Apprentice has completed any prerequisites to an End Point Assessment, including any mandatory qualifications;
  - 2.2.4. Conducting End Point Assessments of Apprentices;
  - 2.2.5. Supplying the ESFA with evidence of completed End Point Assessments for the relevant Apprentices, as set out in the Process Document (appendix a). This will trigger the final payment from the ESFA;
  - 2.2.6. Quality assuring the End Point Assessments that the Contractor delivers;
  - 2.2.7. Adhering to the external quality assurance arrangements;
  - 2.2.8. Ensuring each End Point Assessment is synoptic and independent;
  - 2.2.9. Identifying and recording when the Apprentice has passed the End Point Assessment; and
  - 2.2.10. Applying to the ESFA for the apprenticeship certificate.
  
- 2.3. The Contractor shall apply to be listed on the Register for the relevant Standard.
  
- 2.4. The Contractor shall develop all necessary assessment Materials and train assessors to prepare for Assessment Delivery within 12 weeks of the Contract Date. In order to be ready to deliver an End Point Assessment, the ESFA requires the Contractor to have:
  - 2.4.1. Materials in place that are clear, accessible and pitched at the right level and covering the right content for the Standard;
  - 2.4.2. Materials that clearly differentiate for different audiences (e.g., employer, apprentice, including those with additional requirements provider);

- 2.4.3. A range of different Materials (e.g. templates or timeline setting out the apprentice journey);
  - 2.4.4. Robust plans in place to deliver occupation-specific End Point Assessments;
  - 2.4.5. Effective and regular communication with employers;
  - 2.4.6. Contingency plans in place;
  - 2.4.7. Sufficient assessors in place to meet immediate demand and geographic coverage;
  - 2.4.8. Assessors that have good occupational and assessment expertise; and
  - 2.4.9. Training of assessors and standardisation of materials undertaken.
- 2.5. Subject to the conditions of acceptance for the Register of End-Point Assessment Organisations, the Contractor has the freedom to source and acquire Standard specific expertise and assessment development from third party organisations. Activities related to administration and general Assessment delivery should not be subcontracted.
- 2.6. Where the Contractor wants to use Sub-Contractors for Assessment Development, it must ensure that the Sub-Contractors are of good quality and will provide appropriate assessment Materials in line with the Assessment Plan.

### **3. DELIVERY OF END POINT ASSESSMENTS**

- 3.1. The Contractor shall contract directly with the Provider in order to book and deliver the Assessment. For the avoidance of doubt the charges for the delivery of an end-point assessment are outside the scope of the Framework Agreement and any Contract let under it.
- 3.2. If the Contractor is awarded a Contract for any Standards for which it is not already listed on the Register, the Contractor must be approved to be listed on the Register for the relevant Standards before the Contractor delivers any Assessments in relation to them.
- 3.3. The Contractor shall provide remote delivery of Assessments where possible and permitted under the relevant Assessment Plan.
- 3.4. The Contractor shall be ready to deliver Assessments to Apprentices within 12 weeks of the Call-off Contract Date.
- 3.5. The Contractor shall make contact with named Providers and engage in the appropriate contracting to allow for delivery of End-point Assessments. In order to do this, the Contractor shall have in place or develop where necessary and implement associated administrative requirements, including but not limited to:

- 3.5.1. Booking systems for new End Point Assessments;
  - 3.5.2. Booking systems for Assessor travel;
  - 3.5.3. Booking systems for venues for Assessment if necessary;
  - 3.5.4. Payment mechanisms for paying any assessors;
  - 3.5.5. Additional access support for people who may require it
- 3.6. The Contractor must be resourced sufficiently and have procedures in place to allow them to divert resource to fulfil a call off contract without negatively impacting on quality of delivery.

#### **4. RECORD KEEPING**

- 4.1. The Contractor shall ensure that it keeps accurate records and maintains evidence to support claims for payment. The record keeping and evidence requirements include:
- 4.1.1. Evidence of development activities
  - 4.1.2. Evidence of assessor and staff recruitment and training
  - 4.1.3. Evidence of End Point Assessments being booked for Apprentices
- 4.2. The Contractor shall submit data and progress updates as required by the Contract.

#### **5. INFORMATION, ADVICE AND GUIDANCE FOR EMPLOYERS, TRAINING PROVIDERS AND APPRENTICES**

- 5.1. The Contractor shall provide information, advice and guidance that is clear and easily accessible to all Parties.
- 5.2. The Contractor shall deliver the Services so as to ensure:
- 5.2.1. Value for money;
  - 5.2.2. The protection of public funds; and
  - 5.2.3. The effective delivery of a high-quality Service for Apprentices appropriate to their needs.

The Contractor shall complete an Apprentice's Assessment on or as close to the planned end date in line with the Apprentice's progress as possible, subject to the Employer and Apprentice's readiness.

## SCHEDULE 2: PART 1 – PRICING

### 1. Definitions

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

<b>“Charges”</b>	means the charges as set out in Table 1 payable by the ESFA for each Service that is subject to this Contract;
<b>“Milestone Reimbursement Payment”</b>	means the payment made for each milestone that is completed and verified by the ESFA;
<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 included at Annex 1 of this Schedule 2: Part 1 Pricing);
<b>“Total Contract Value”</b>	means the total value of the Services to be delivered under this Contract. The Total Contract Value is stated in the table at Annex 1.

### 2. General

2.1 The ESFA shall pay the Contractor the Charges consisting of a series of Milestone Reimbursement Payments as set out in Annex 1 to this Schedule (Charges Payment Process).

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 ESFA, 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 after a Milestone has been achieved in accordance with the provisions set out in clause 29. The Contractor must provide supporting evidence that the Milestones that are being claimed for in that invoice have been completed. The data provided will be validated and verified by the ESFA.

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 ESFA to the Contractor) the ESFA 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 ESFA to enable the ESFA to validate any claim for payment made by the Contractor.

### 3. Recovery of Sums Due

3.1 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 ESFA in respect of any breach of the Contract), the ESFA may unilaterally deduct the sum from any sum due, or which at any later time may become any other

agreement or contract with the ESFA.

- 3.2 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.
- 3.3 The Contractor shall make any payments due to the ESFA 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 ESFA to the Contractor.
- 3.4 If the Contractor does not meet Milestones included in its Implementation Plan, the ESFA reserves the right to recover any Charges paid under this Contract. The agreed sum of Charges will be recovered via a credit note submitted by the Contractor to the ESFA.

#### **4. Disputed Claims**

- 4.1 Payment by the ESFA of all or any part of any Charges rendered or other claim for payment by the Contractor shall not signify approval. The ESFA reserves the right to verify Charges after the date of payment and subsequently to recover any sums, which have been overpaid.
- 4.2 If any part of a claim rendered by the Contractor is disputed or subject to question by the ESFA either before or after payment then, upon request, the Contractor shall provide such further documentary and oral evidence as the ESFA 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 ESFA.
- 4.3 If any part of a claim rendered by the Contractor is disputed or subject to question by the ESFA, the ESFA shall not withhold payment of the remainder.
- 4.4 If any fee rendered by the Contractor is paid but any part of it is disputed or subject to question by the ESFA and such part is subsequently agreed or determined not to have been properly payable then the Contractor shall immediately repay such part to the ESFA.
- 4.5 The ESFA 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 Charges for which payment is being made or any previous Charges.

#### **5. Financial Reporting and Audit**

- 5.1 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 in it, 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.
- 5.2 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 ESFA or any persons appointed to act on the ESFA's behalf

at any reasonable time having made prior appointment with the Contractor. The ESFA 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 ESFA's written request.

- 5.3 If the ESFA 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 ESFA with documentary evidence relating to such sums and contractual obligations.
- 5.4 During the Contract Period, and for a period of 7 (seven) years following the end of the Contract Period, the Contractor shall:
  - 5.4.1 maintain and retain the Open Book Data; and
  - 5.4.2 disclose and allow the ESFA and/or the auditor (whether internal or external) of the ESFA access to the Open Book Data.
- 5.5 The Contractor shall co-operate fully and in a timely manner with any reasonable request from time to time of the ESFA 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.
- 5.6 The Contractor shall instruct its external auditor to provide reasonable co-operation with the Audit Agents for the purposes of verifying financial information.
- 5.7 The ESFA shall during each audit comply with those security, sites, systems and facilities operating procedures of the Contractor that the ESFA 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 – CHARGES PAYMENT PROCESS

### 1. Charges

- 1.1. Subject to the terms of the Contract, the ESFA shall reimburse the Charges for the Total Contract Value of **£45,350** in arrears on a Milestone basis as set out in Table 1.

Table 1: Milestone Payment Reimbursement

Table A Milestones for Set Up		
Milestone	Milestone Date*	Milestone Reimbursement Payment – as a Percentage of the Total Contract Value and £
Milestone 1: Implementation Plan agreed	14th calendar day after the Contract Date	5% = £2,267.50
Milestone 2: Phase 1 content developed to date submitted to the ESFA as evidence of progress	35th calendar day after the Contract Date	10% = £4,535
Milestone 3: Phase 2 content developed to date submitted to the ESFA as evidence of progress	63rd calendar day after the Contract Date	10% = £4,535
Milestone 4: Confirmation that all materials developed, and quality assured and ready for use	93rd calendar day after the Contract Date	50% = £22,675
Milestone 5: Timely scheduling of EPA for in scope apprentices	100th calendar day after the Contract Date	25% = £11,337.50

\* Where the calendar day falls on a non-Working Day, the Milestone Date shall be deemed to be the next Working Day.

- 1.2. The Charges are restricted to the activities in the Pricing and Delivery Form:



1.2.1 Rail and Rail Systems Engineer - Pricing and Delivery Forms.zip

- 1.3. All other costs not listed in paragraph 1.2 will not be eligible for reimbursement as part of the Charges.
- 1.4. To receive a Milestone Reimbursement Payment for the relevant milestone, the Contractor must provide evidence to the ESFA that the milestone has been achieved and completed. Only when the evidence has been submitted and verified by the ESFA will payment be made. Once evidence has been verified that the milestone has been achieved, an invoice for the Milestone Reimbursement Payment must be submitted

within 10 (ten) Working Days.

- 1.5. If a Contractor fails to achieve a Milestone by the deadline, the Contractor will not be eligible to claim the relevant Milestone Reimbursement Payment, unless agreed by the ESFA to extend the date for that Milestone via a contract Variation. The Contractor may then invoice for the relevant Milestone Reimbursement Payment when the Milestone is verified as being achieved by the ESFA.
- 1.6. If the Contractor does not complete Milestone 1, it will not be eligible to receive Milestone Reimbursement Payments for any subsequent Milestones until Milestone 1 is complete and verified by the ESFA and the ESFA will not be under any obligation to agree a consequential Variation to the Milestone Dates for the other Milestones.
- 1.7. Failure to achieve Milestone 2 by the Milestone Date is a Serious Breach which cannot be remedied.

## **2. Pricing of Variations**

- 2.1. The provisions of this paragraph shall apply to the pricing of any Variation (or proposed Variation) and the calculation of any change to the Charges consequent upon a Variation (or proposed Variation).
- 2.2. The Parties acknowledge that a Variation or proposed Variation may have an impact on the Charges in one or more of the following ways:
  - 2.2.1 One-off cost, in which case paragraph 2.5 shall apply;
  - 2.2.2 Subject to the Contractor's obligation to mitigate increases in the Charges, a Process Variation may result in an amendment to the Charges, in which case paragraph 2.6 shall apply;
  - 2.2.3 The cost of any up-front investment by the Contractor in order to achieve a Variation as set out in paragraph 2.2.2, in which case paragraph 2.12 shall apply.
- 2.3. In any of the cases referred to in paragraphs 2.2.1 to 2.2.3 above, the Contractor shall use the Pricing Schedule provided by the ESFA to demonstrate and justify any claim for additional or reduced Charges arising as a result of any proposed Variation.
- 2.4. Where a Variation is requested by either Party under the Change Control Procedure then, subject to the terms of the Change Control Procedure, the Contractor shall at its own cost prepare, populate and submit for the ESFA's approval a specific version of the Pricing Schedule demonstrating the impact of the proposed Variation which shall:
  - 2.4.1 Be based on and reflect the principles of the Pricing Schedule, having regard to any assumptions stated in the Pricing Schedule which affect the Charges;
  - 2.4.2 Include estimated volumes of each type of resource to be employed and the applicable average annual salary for resource employed specified in the Pricing Schedule;
  - 2.4.3 Include full disclosure of any assumptions underlying such a quotation. The ESFA reserves the right to request further clarity around these assumptions and the underlying calculations until it is satisfied as to their validity; and
  - 2.4.4 Include evidence of the cost of any assets required for the Variation.
- 2.5. Where paragraph 2.2.1 applies:
  - 2.5.1 The Contractor shall be paid in full upon completion, or by an agreed Schedule of Milestone Reimbursement Payments (both payment options subject to meeting specified acceptance criteria agreed at the outset).
  - 2.5.2 The ESFA shall issue a separate purchase order and the Contractor shall

raise a separate invoice or credit note in respect of the one-off cost.

- 2.6. Where paragraph 2.2.2 applies any necessary changes to the Charges shall be affected by means of changes to the relevant Contract Pricing Information.
- 2.7. Following implementation of a Variation, the ESFA shall make any necessary consequential changes and/or updates to the Charges.

## SCHEDULE 2: PART 2 – PERFORMANCE

In this section the words below have the following meaning:

<b>“Improvement Plan”</b>	means a plan for improvement that the ESFA can request from the Contractor within ten (10) Working Days in the event of failure.
<b>“Performance Management”</b>	means how the ESFA will measure the Contractor’s performance and progress against the Specification (Schedule 1), the Implementation Plan (Schedule 5), and Pricing (Annex 1 of Schedule 2: Part 1).
<b>“Performance Manager”</b>	means the person the Contractor will appoint to ensure that the Contract is delivered as specified in the Contract and that Service Levels, Minimum Targets and KPIs are achieved.
<b>“Reporting Period”</b>	means the reporting period that occurs every calendar month from 25th of each month to the 24th of the following month and will commence on the Contract Commencement Date.
<b>“Service 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

- 1.1 This section sets out the Service Levels against which the Parties shall measure the Contractor’s performance.
- 1.2 The objective of the Service Levels is to:
  - 1.2.1 ensure that the Services are of a consistently high quality and meet the requirements of the ESFA;
  - 1.2.2 provide a mechanism whereby the ESFA 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 ESFA 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 ESFA reserves the right to take action in line with paragraphs 2.11 to 2.13 (Consequence of Service Failure).
- 1.7 Service Levels are set out in Table 1 below:

<b>Table 1 Service Levels</b>		
<b>Subject</b>	<b>Ref</b>	<b>Service Level</b>
Reporting and Meetings	RM1	Attend Framework Agreement management meetings.
	RM2	Attend any ad hoc development and operational meetings as required by the ESFA.
	RM3	Attend annual Framework Agreement review meetings. At least 7 working days prior to the meeting a summary report should be submitted to the ESFA for review that outlines progress against all key milestones set out in the contract.
	RM4	Attend annual group meeting of Framework Supplier with the ESFA where the ESFA will discuss issues arising in the previous year and will look ahead to the future
Administration / Communication	C1	Submission of Quotations within the times required by the ESFA and Schools.
	C2	Transfer to the ESFA all FOI requests as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information.
	C3	Handling and communicating with their supply chain within the times required by the ESFA

## **2 PERFORMANCE MANAGEMENT**

- 2.1 The ESFA shall monitor the Contractor's performance and progress against the Specification (Schedule 1), the Implementation Plan (Schedule 5), and Pricing (Annex 1 of Schedule 2: Part 1) within a Reporting Period and during performance review meetings. The Contractor shall cooperate with the ESFA in this regard and provide any information and evidence reasonably required by the ESFA 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 ESFA to ensure that the Services are delivered as specified in the Contract and that Milestones and Service Levels 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 ESFA 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 ESFA may instruct the Contractor to take appropriate remedial action where the ESFA reasonably considers that the Implementation Plan is not being complied with, and the Contractor shall take such remedial action.
- 2.6 If there is a failure to achieve a Milestone and / or one or more Service Levels 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 Contractor shall supply Management Information and Data relevant to the delivery of the Services to the ESFA, using formats and to timescales as detailed in the Specification or as are otherwise notified to the Contractor by the ESFA.
- 2.9 In addition to the provision of Management Information, the Contractor shall respond to and provide additional information (at no additional charge) relating to the provision of the Services as required by the ESFA from time to time.
- 2.10 The ESFA 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 on giving 5 (five) days' written notice.

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

- 2.11 Without prejudice to any other rights or remedies arising under this Contract, including under clause 12 (Termination) for material breach, if the Contractor incurs a Service Failure in any Relevant Period, the Contractor acknowledges and agrees that the ESFA shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:
  - 2.11.1 The ESFA shall be entitled to require the Contractor, and the Contractor agrees to prepare and provide to the ESFA, a plan for improvement (an "Improvement Plan") within ten (10) Working Days of a written request by the ESFA for such Improvement Plan. Such Improvement Plan shall be subject to the ESFA's prior approval and the Contractor will be required to implement any approved Improvement Plan, as soon as reasonably practicable;
  - 2.11.2 The ESFA 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 ESFA in order to resolve the issues raised by the ESFA in its notice to the Contractor requesting such meetings;
  - 2.11.3 The ESFA shall be entitled to serve a notice of improvement ("Improvement Notice") on the Contractor and the Contractor shall implement such requirements for improvement as set out in the Improvement Notice;
  - 2.11.4 The ESFA 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;
- 2.12 In the event that the ESFA has, in its absolute and sole discretion, invoked one or more of the remedies set in paragraph 2.11 above the ESFA may suspend the Contractor from the Framework Agreement pending the ESFA being satisfied that the Contractor

has;

2.12.1 implemented the requirements for improvement set out in the Improvement Notice; and/or

2.12.2 implemented an Improvement Plan approved by the ESFA; and/or

2.12.3 met the interim performance measures and/or milestones.

2.13 Whether or not the ESFA has exercised its rights pursuant to paragraph 2.12 in the event that the ESFA has, in its absolute and sole discretions invoked one or more of the remedies set out in paragraph 2.9 above and allowed the Contractor reasonable opportunity to remedy the Service Failure, and the Contractor either;

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

2.13.2 fails to implement an Improvement Plan approved by the ESFA; and/or

2.13.3 fails to meet the interim performance measures and/or milestones,

then (without prejudice to any other rights and remedies of termination provided for in this Contract), the ESFA shall be entitled to terminate this Contract and with immediate effect by notice in writing in accordance with clause 12.5.1. Termination of the Contract will be considered a Material Default and the ESFA may at its absolute discretion terminate the Framework Agreement as per paragraph 7.4 of the Framework Agreement.

## SCHEDULE 3: 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 ESFA’s discretion, the Contractor shall ensure that 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 (Parent Company Guarantee).

2.2 The Contractor shall:

- (a) regularly monitor compliance with the Guarantee Criteria; and
- (b) promptly notify the ESFA 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 (ten) 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 ESFA 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 ESFA 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 ESFA 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 ESFA 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 ESFA, meet the ESFA as soon as reasonably practicable (and in any event within 3 (three) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the ESFA 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 ESFA 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 ESFA a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 (ten) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the ESFA may permit and notify to the Contractor in writing); and
  - (ii) provide such financial information relating to the Contractor or the Guarantor as the ESFA 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 ESFA; 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 ESFA and the Parties may agree that the Contractor shall be relieved of its obligations under paragraph 3.3.

#### **4 TERMINATION RIGHTS**

The ESFA shall notify the Contractor in writing of its intention to terminate this Contract under clause 12 (Termination) following a period of 30 days to allow the Contractor an opportunity to remedy the default to the ESFA's satisfaction and at no cost to the ESFA, if:

- (a) the Contractor fails to notify the ESFA of a Financial Distress Event in accordance with paragraph 2.2(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 4 – CHANGE CONTROL PROCEDURE**

### **1 INTRODUCTION**

- 1.1 This Schedule 4 sets out the Change Control Procedure to be used by the ESFA 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 ESFA 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) Working Days.
- 2.5 The ESFA 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 4) shall be undertaken entirely at the expense and liability of the Contractor unless otherwise agreed between the ESFA 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 4 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 4, shall be uniquely identified by a sequential number allocated by the ESFA.
- 3.4 Two (2) copies of each CCN shall be signed by the Contractor and submitted to the ESFA not less than ten (10) Working Days prior to the effective date agreed in accordance with paragraph 3.2.2 of this Schedule 4.
- 3.5 Subject to the agreement reached in accordance with paragraph 3.2.2 of this Schedule 4 remaining valid, the ESFA shall sign both copies of the approved CCN within five (5) Working Days of receipt by the ESFA. Following signature by the ESFA, one (1) copy of the signed CCN shall be returned to the Consultant by the ESFA.
- 3.6 A CCN signed by both parties shall constitute a valid variation or amendment to the Contract for the purposes of clause 20.2 of the Contract.
- 3.7 The ESFA may at its absolute discretion reject any request for a Variation proposed by the Contractor.

## ANNEX 1 TO SCHEDULE 4 - 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 ESFA's Framework Manager]  
Title: [CCN title]  
Originator: [the ESFA / the Contractor] Date change first proposed: [date]  
Number of pages attached: [pages]

WHEREAS the Contractor and the ESFA entered into a Contract for the provision of Emergency End Point Assessment Services dated [date] and now wish to amend that Contract;

#### Reason for proposed change

[Party proposing change to complete]

#### Full details of proposed change

[Party proposing change to complete]

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

[Party proposing change to complete]

#### IT IS AGREED as follows:

1. With effect from [date] it is proposed that the Contract shall be amended as set out below:  
[Details of the amendments to the Contract to be inserted here – to include the explicit changes required to the text in order to effect the change, i.e., clause/Schedule/paragraph number, required deletions and insertions etc.]
2. Save as herein amended, all other terms and conditions of the 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 20 of this Contract.

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

**By** .....

**Name** .....

**Title** .....

**Date** .....

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

**By** .....

**Name** .....

**Title** .....

**Date** .....

## SCHEDULE 5: IMPLEMENTATION PLAN

### Implementation Plan – ST0495 Rail and Rail Systems Engineer

Milestone/ Phase	Activity	Task	Duration (days )	Cumulative Total (days )	Comments/ Consideration s	Payment (Number of days after contract date) if Milestone Achieve d
<b>Milestone 1</b>	<b>Phases 1</b>					<b>Day 14 (5%)</b>
1.	Application to ESFA RoEPAO and Ofqual scope or recognition	Scope of recognition application submitted – Ofqual	1	1	Drafted prior to contract award	
2.	Adverts published for subject leads and IEPAs	Role description Person specification  Job advert Website updated Advertise in targeted places and liaise with NSAR	1	1	Advert and person specs drafted prior to contract award  Target existing occupation contacts and start engagement with historic EPAO(s) for the standard	

3.	Adverts closed for subject leads and IEPAs		12	14	Dependent on response – may be extended	
<b>Milestone 2</b>	<b>Phases 2 - 3</b>					<b>Day 35 (10%)</b>
4.	Appointment of subject leads and IEPAs	Initial calls as/when expressions of interest received  Interviews held by Assessment Development team	7	21	Diarise interview window under point 2	
5.	Contacts issued for subject leads and IEPAs	Declarations Conflicts of interest register References DBS checks (where required)	4	25	Process and contract templates in place  Review Conflict of Interest declarations when contracts returned	
6.	Adding EPA to Ofqual Register	Internal scrutiny panel to confirm development  Operational team – adding to register and set up on Open Awards	1	26	Dependent on scope of recognition application approval from Ofqual	

		database				
7.	Application to ESFA register		2	28	Dependent on scope of recognition application approval from Ofqual  Draft completed at milestone 1	
8.	Development of draft EPA Handbook	Draft handbook Proof-read and formatting IQA checks	14	28	<b>Points 8 – 11 will be completed over 2 weeks concurrently.</b>	
9.	Development of Centre Packs	Draft guidance Proof-read and formatting IQA checks	14	28		
10.	Development of Setting Specifications and writing guidance	SME and assessment lead scoping meetings Development meetings Draft specifications IQA checks	14	35	Dependent on timely clarification on any queries from assessment plan  Initial queries raised and submitted prior to phase 1	
11.	Draft Assessment Strategy	SME and assessment lead scoping meetings  Development	14	35	Draft Assessment Strategy	

		meetings Draft specifications IQA checks				
<b>Milestone 3</b>	<b>Phase 4</b>					<b>Day 63 (10%)</b>
12.	Determine SME requirements				Ongoing throughout phase 4	
13.	Training for subject leads and writers/ reviewers	Develop training resources and materials Agree dates Internal facilitator training	7	42	Training activities and resources plan and developed in phases 1-3	
14.	Database Workflow Drafted	Amend existing EPA workflows for specific Standard Build workflow Testing	14	56		
15.	Development of Assessment Materials and recording documentation	Follow OA development process for development of assessment materials	20	63	Draft templates developed in phase 3	
Component 1	Workplace Project	Follow OA development process for development of assessment	40 days in total	63	Based on 3 briefs and marking guidance/ criteria per pathway (x7). 40 days in total but more than one person working on this so anticipating being completed by day	

		<ul style="list-style-type: none"> <li>materials</li> <li>- Writing</li> <li>- Review</li> <li>- Lead Review</li> <li>- QPEC</li> <li>- Final Sign-off</li> </ul>			63	
Component 2	Practical Task	<p>Follow OA development process for development of assessment materials</p> <ul style="list-style-type: none"> <li>- Writing</li> <li>- Review</li> <li>- Lead Review</li> <li>- QPEC</li> <li>- Final Sign-off</li> </ul>	21 days in total	63	Based on preparing briefs for guidance and setting spec + question bank for Q&A for 7 pathways	
<b>Milestone 4</b>	<b>Phases 5 - 7</b>					<b>Day 93 (50%)</b>
16.	Development of Additional Materials	<p>Draft materials</p> <p>Proof-read and formatting</p> <p>IQA checks</p>	6	69		
	Develop Assessor Handbook	<p>Draft Handbook</p> <p>Proof-read and formatting</p> <p>IQA checks</p>	6	69	Some shared generic content between standards	
	Finalise Gateway documentation and portfolio of evidence guidance	<p>Produce documentation</p> <p>Proof-read and formatting</p>	6	69	Drafted in phase 1	

		IQA checks Upload to Portal				
17.	Internal training of Customer Service and Delivery Teams	Operational procedures Workflows Standard-specific considerations	3	72	Familiarisation with gateway requirements and assessment workflows	
18.	QA of assessment materials (QPEC)	Follow OA assessment development process for QPEC	8	80	See component notes above.	
19.	Development of IQA Materials	Produce documentation Proof-read and formatting IQA checks Upload to Portal	6	86	Use existing materials for IQA	
20.	Lead assessor training	Deliver training Recording of training Identifying further training Follow-up 1-1 calls with Assessment Team	2	88	Focus on use of QA materials and planning QA activities	
21.	Assessor Induction Training and standardisation	Deliver training Recording of training	2	90	Generic induction training non-standard	

	n	Identifying further training Follow-up 1-1 calls with Lead			specific – provide options  Standard specific training and standardisation led by lead assessor  Provide access to assessment materials	
<b>Milestone 5</b>	<b>Phase 8</b>					<b>Day 100 (25%)</b>
22.	Booking of EPA for apprentices	Following OA operational procedures	10	100	Via existing database and operational procedures	
23.	Overall duration			100		

## SCHEDULE 6 QUALITY ASSURANCE

### 1 DEFINITIONS

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

- “Quality Failure”** 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 Contract.
- “QA Function”** means the ESFA or the third party appointed by the ESFA to monitor Quality Assurance delivery in accordance with the Specification.
- “Quality Assurance”** means how the ESFA or its representatives will measure the Contractor’s performance in developing and delivering the training programme.
- “Quality Assurance Framework”** means the documents that set out quality requirements and processes that the Contractor shall comply with when delivering the services.
- “Service Failure”** shall have the same meaning as set out in Part 2 of Schedule 2.

### 2 GENERAL

- 2.1 The Contractor complies with the Quality Assurance requirements set out in the Specification and this Schedule.
- 2.2 The Contractor ensures they implement effective quality management arrangements to ensure the Services provided in accordance with the Specification and this Schedule.
- 2.3 The ESFA will monitor the quality of the Services being provided by the Contractor. The ESFA may employ third parties to undertake some or all the work.
- 2.4 The Contractor must take the necessary actions as recommended by the ESFA or its representative.
- 2.5 The ESFA 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:
- 2.5.1 ongoing contractual requirements – ensuring the Contractor is complying with its obligations, including reviewing, and using data produced by the Contractor;
  - 2.5.2 the Contractor’s record in achieving the Milestones in this Contract;
  - 2.5.3 any specific areas set out in the Call Off Order.
- 2.6 The Contractor shall cooperate with the ongoing requirements of the ESFA in supplying information, facilitating visits to the Contractor and its Sub Contractors, and otherwise supporting the work of the ESFA to make assessments of quality.

2.7 The Contractor will achieve and maintain Ofqual recognition for each Standard to be delivered as part of the Services under this Contract.

### **3 COMPLAINTS**

3.1 The Contractor shall implement, maintain and operate effective and clear procedures for receiving, investigating and responding to complaints.

3.2 The Contractor shall provide the ESFA with information about the number and nature of complaints it receives and the outcome of each complaint it processes and in accordance with paragraphs 3.3.2 and 3.3.3 below. This information shall be provided with the Management Information report.

3.3 In addition, the Contractor shall ensure:

3.3.1 complaints are investigated by individuals not involved in the subject matter of the complaint;

3.3.2 report all complaints about the Services to Department within three (3) Working Days from the date of the complaint;

3.3.3 provide a meaningful response to all complainants by telephone or in person, as well as in writing, copying in the ESFA, within five (5) Working Days from the date of the complaint.

## SCHEDULE 7: KEY PERSONNEL AND SUB-CONTRACTORS

### TO BE COMPLETED PRIOR TO CONTRACT SIGNATURE

#### Key Personnel

The individuals listed in the table below are Key Personnel:

Name	Role	Period of Involvement

#### Key Sub-Contractors

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

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

## SCHEDULE 8: COMMERCIALLY SENSITIVE INFORMATION

### TO BE COMPLETED PRIOR TO CONTRACT SIGNATURE

- 1 The ESFA acknowledges that the Contractor has requested that the following information be treated as Commercially Sensitive Information;  
<insert table of the information identified as commercially sensitive>
- 2 The ESFA will consult with the Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.
- 3 The ESFA 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 ESFA 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 ESFA reserves the right to determine whether any information provided in this Schedule does constitute Commercially Sensitive Information prior to publication.