

## **SCHEDULE 4: FINANCIAL DISTRESS**

### **1. DEFINITIONS**

In this Schedule, the following definitions shall apply:

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

### **2. FINANCIAL STANDING**

- 2.1. If during the Contract Period the Contractor does not meet any of the Guarantee Criteria, at the Departments discretion, the Contractor shall ensure that:
- (a) an Affiliate of the Contractor which at the relevant time and thereafter meets all the Guarantee Criteria shall become a Guarantor and shall provide a Guarantee in the form set out in Framework Agreement, Schedule 9 (Guarantee); or
  - (b) in the event that a Group Company is not able to meet the Guarantee Criteria the Contractor shall provide suitable alternative security in the form of:
    - (i) an Association of British Insurers (ABI) Model Form of Guarantee Bond or equivalent bond to the Department to a value of £2,000,000 (Two Million Pounds); or
    - (ii) an alternative guarantee, the provision of funds or reserves by a third party under guarantee, cash, deposit or escrow account as the Department may approve (such approval not to be unreasonably withheld or delayed).
- 2.2. The Contractor shall:
- (a) regularly monitor compliance with the Guarantee Criteria; and
  - (b) promptly notify the Department in writing following the occurrence of a Financial Distress Event or Key Sub-Contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-Contractor Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Contractor first becomes aware of the Financial Distress Event, the Key Sub-Contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-Contractor Financial Distress Event).
- ### **3 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT**
- 3.1 In the event of:
- (a) the Contractor not meeting the Guarantee Criteria or providing a Guarantor that meets the Guarantee Criteria, or providing alternative security as set out in paragraph 2.1 (b);
  - (b) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Contractor, or the Guarantor or any Key Sub-Contractor;
  - (c) the Contractor, the Guarantor or any Key Sub-Contractor committing a material breach of covenant to its lenders;

- (d) a Key Sub-Contractor notifying the Department that the Contractor has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- (e) any of the following:
  - (i) commencement of any litigation against the Contractor, the Guarantor or any Key Sub-Contractor with respect to financial indebtedness greater than £5,000,000 million (Five Million Pounds) or obligations under a service contract with a Total Contract Value greater than £5,000,000 million (Five Million Pounds) and which is reasonably likely to be adversely determined;
  - (ii) non-payment by the Contractor, the Guarantor or any Key Sub-Contractor of any material financial indebtedness;
  - (iii) any material financial indebtedness of the Contractor, the Guarantor or any Key Sub-Contractor becoming due as a result of an event of default; or
  - (iv) the cancellation or suspension of any material financial indebtedness in respect of the Contractor, the Guarantor or any Key Sub-Contractor, in each case which the Department reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement;

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

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

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

3.3 The Contractor shall:

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

- 3.4 Where the Contractor reasonably believes that the relevant Financial Distress Event under paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Department and the Parties may agree that the Contractor shall be relieved of its obligations under paragraph 3.3.

#### **4 TERMINATION RIGHTS**

- 4.1 The Department shall notify the Contractor in writing of its intention to terminate this Contract under clause 10 (Termination) following a period of 30 days to allow the Contractor an opportunity to remedy the default to the Department's satisfaction and at no cost to the Department, if:
- (a) the Contractor fails to notify the Department of a Financial Distress Event in accordance with paragraph 2.2(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 5 – CHANGE CONTROL PROCEDURE**

### **1. INTRODUCTION**

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

### **2. PRINCIPLES**

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

### **3. PROCEDURE**

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

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

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

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

**Contract Change Note for the Contract Change Procedure**

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

WHEREAS the Contractor and the Department entered into a Call Off Contract for the provision of National Professional Qualifications and Early Headship Coaching Offer for New Head Teachers related services dated [date] and now wish to amend that Contract;

**Reason for proposed change**

[Party proposing change to complete]

**Full details of proposed change**

[Party proposing change to complete]

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

[Party proposing change to complete]

**IT IS AGREED** as follows:

1. With effect from [date] it is proposed that the Call Off Contract shall be amended as set out below:  
 [Details of the amendments to the Call Off Contract to be inserted here – to include the explicit changes required to the text in order to effect the change, i.e. clause/Schedule/paragraph number, required deletions and insertions etc.]
2. Save as herein amended, all other terms and conditions of the Call Off Contract inclusive of any previous CCNs shall remain in full force and effect.
3. The amendments shall be made by way of a Deed of Variation in accordance with clause 18 of this Call Off Contract.

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

**By** .....

**Name** .....

**Title** .....

**Date** .....

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

**By** .....

**Name** .....

**Title** .....

**Date** .....

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

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

Table 21 - Lots 2 – 4 service delivery	
Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Department is the Controller and the Contractor is the Processor in accordance with clause 17.
Subject matter of the processing	The processing is needed in order to ensure: <ol style="list-style-type: none"> <li>a) that the Contractor can effectively deliver the contract to provide the design and delivery of the National Professional Qualifications Delivery Framework;</li> <li>b) that the Department can effectively manage the delivery of the Contract by the Contractor.</li> </ol>
Duration of the processing	The processing will take place throughout the lifetime of the contract.
Nature and purposes of the processing	<p><u>Legal Basis for Processing:</u></p> <p>(i) Personal Data is shared and processed on the legal basis that the processing is necessary for the performance of a task in the public interest pursuant to Section 14 of the Education Act 2002.</p> <p>(ii) Personal Data shared for the purposes of the National Professional Qualifications Delivery Framework, is shared and processed on the basis that the Data Subject has given consent to the processing.</p> <p><u>Nature for Processing:</u></p> <p>Collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) related to Participants to enable the recruitment, design, delivery, monitoring and evaluation of programme impacts and outcomes.</p>



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

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

Not used.

## SCHEDULE 8 – QUALITY ASSURANCE

### 1. DEFINITIONS

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

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

### 2. GENERAL

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

- 2.6.4. assessment delivery – reviewing Summative Assessment materials (case studies and mark schemes) and, where it deems relevant, request evidence as to how Formative Assessment is used to inform delivery, and as to how the Contractor is compliant with requirements related to delivering summative assessment;
  - 2.6.5. Contractor’s QA systems – sample checking/reviewing the Contractor’s QA system and management arrangements; and
  - 2.6.6. any specific areas set out in the Call Off Order.
- 2.7. The Contractor shall cooperate with the ongoing requirements of the QA Function in supplying information, facilitating visits to the Contractor and its Delivery Partners and Participants, and otherwise supporting the work of the QA Function to make assessments of quality according to the agreed Quality Assurance Framework ([Early career framework and national professional qualification inspection framework and handbook](#)).
  - 2.8. The Contractor shall engage with the Department and/or Ofsted as required, typically providing data as required on a termly or annual basis and supporting inspection visits between every 1-2 years. This will include facilitating contact with delivery partners through the timely provision of relevant data required by Ofsted to plan visits in advance. Subject to the outcome of inspections, the Department reserves the right to vary the frequency of future inspections e.g. shorter turnaround where issues or failures were identified and longer turnaround for positive outcomes.
  - 2.9. The QA Function may make recommendations that the Contractor will be required to action in relation to:
    - 2.9.1. Service Improvements – improvements that arise out of continuous improvements, lessons learnt, user feedback and best practice or any other action that at the QA Functions discretion would benefit from being adopted across the Framework; and
    - 2.9.2. Quality and Performance – Contractors will be subject to inspection by QA Function who will publish a judgement and report against the Inspection Framework that will inform the Departments management of quality and performance. The Department will agree with the Contractor an Improvement Plan in response to the inspection judgement and/or to address specific issues where either a failure to adhere to the Inspection Framework, instances of poor practice, breaches of the Framework Agreement or any other action that at the Department’s discretion needs to be addressed to ensure the desired quality thresholds are maintained.

### **3. SERVICE IMPROVEMENTS**

- 3.1. Where the QA Function makes service improvement recommendations, they shall be under one of the following categories:
  - 3.1.1. Continuous Improvement – service development and improvement activity that is considered to be within the Contractors requirement to apply continuous improvement, respond to feedback and adopt best practice in regard to content and delivery for both ongoing and future Cohorts.
  - 3.1.2. Service Development – activity that requires the Contractor to make considerable revisions to their content and/or delivery to a level whereby it is not possible to implement mid-Cohort and therefore will only be required for future Cohorts. In this instance the Contractor should attempt to implement any such aspects of the recommendation that can be made under paragraph 3.1.1 but will not be required to implement the full recommendation until the next Call Off Contract.
  - 3.1.3. Urgent Service Development – activity that requires the Contractor to make immediate and significant revisions to their content and/or delivery in regard to ongoing Cohorts.
- 3.2. The Contractor implements service improvements that are in accordance with the requirements set out in this Call Off Contract (or minor additions or amendments to) at their own cost.

- 3.3. If the Department requires changes that are additional to those set out in the Call Off Contract and result in additional cost to the Contractor, the cost is assessed and any payment is made in accordance with Schedule 2: Part 1 Pricing via a Variation.
- 3.4. If the Contractor fails to implement a Service Improvement recommendation to the required standard as set out by the Department and within the specified timescale then the Department may, at its sole discretion, apply a Service Credit.

#### 4. QUALITY AND PERFORMANCE

- 4.1 The Department will use the inspection reports and judgements published by Ofsted to inform its wider quality and performance management procedures but will take the following actions in direct response to the judgement made against Ofsted's four-point grading system:

**Table X – Ofsted Judgement Actions**

Judgement	Action
Outstanding	<p><u>Response</u> No formal action required – any recommendations identified can be incorporated within existing continuous improvement plans.</p> <p><u>Service Credits</u> None</p> <p><u>Contractual Implications</u> None</p> <p><u>Inspection Timescales</u> The Contractor will be inspected again within 2 years.</p>
Good	<p><u>Response</u> Where there are recommendations identified the Department reserves the right to request the Contractor to develop an Improvement Plan to resolve the issues within a timely manner.</p> <p><u>Service Credits</u> None</p> <p><u>Contractual Implications</u> None</p> <p><u>Inspection Timescales</u> The Contractor will be inspected again within 2 years.</p>
Requires Improvement	<p><u>Response</u> The Contractor will be required to develop an Improvement Plan to resolve the recommendations within a timely manner, identify lessons learnt for future inspections, manage stakeholders, and set out proposals to manage any reputational damage to the provision.</p> <p><u>Service Credits</u> The Department reserves the right to issue a suspended Service Credit as per paragraph 4.4.</p> <p><u>Contractual Implications</u> If the Contractor does not receive a judgement of 'Outstanding' or 'Good' at the subsequent inspection, then it will be considered a Service Failure and the Department reserves the right to take action in line with paragraphs 2.11 to 2.15 of Schedule 2: Part 2 – Performance (Consequence of Service Failure) and issue a Service Credit.</p> <p><u>Inspection Timescales</u> The Contractor will be inspected again within 1 year.</p>
Inadequate	<p><u>Response</u> The Contractor will be required to develop a remedial action plan, to be enacted prior</p>

	<p>to the publishing of the inspection report, to identify the most urgent issues/concerns to enable service delivery to continue, manage direct stakeholders, and mitigate reputational damage to the Contractor, Department and NPQ programme.</p> <p>The Contractor will be required to develop an Improvement Plan to resolve the recommendations within a timely manner, identify lessons learnt for future inspections, ongoing management of stakeholders, and set out proposals to manage any ongoing reputational damage to the provision.</p> <p><u>Service Credits</u></p> <p>The Department reserves the right to issue a suspended Service Credit as per paragraph 4.4.</p> <p><u>Contractual Implications</u></p> <p>A judgement of 'Inadequate' will be considered a Service Failure and the Department reserves the right to take action in line with paragraphs 2.11 to 2.15 of Schedule 2: Part 2 – Performance (Consequence of Service Failure).</p> <p>If the Contractor does not receive a judgement of 'Outstanding' or 'Good' at the subsequent inspection, then it will be considered a Service Failure and the Department reserves the right to take action in line with paragraphs 2.11 to 2.15 of Schedule 2: Part 2 – Performance (Consequence of Service Failure) and issue a Service Credit.</p> <p>If the Contractor receives multiple 'Inadequate' judgements, then it will be considered a Service Failure and the Department reserves the right to suspend the Contractor from future call-off opportunities as per clause 7.10 &amp; 7.12 of the Framework Agreement.</p> <p><u>Inspection Timescales</u></p> <p>The Contractor will be inspected again within 1 year.</p>
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- 4.2 Where an Improvement Plan is required, it should include clear actions and mitigations to address the recommendations including, timelines, milestones and any interim performance measures to enable management of progress against the plan. Improvement Plans will need to be agreed with the Department in line with the following schedule:
- 4.2.1 Draft version issued to the Department no less than 1 week prior to the publication of the Inspection Report; and
  - 4.2.2 Final plan agreed no later than 2 weeks after the publishing of the report.
- 4.3 The Department will use the Ofsted inspection reports as part of the wider performance management procedures and in addition to the direct response's outlined in table X, if in the Departments opinion, concerns are identified that have, or are considered likely to have, a negative impact on service quality, governance or participant satisfaction then the department reserves the right to take action in line with paragraphs 2.11 to 2.15 of Schedule 2: Part 2 – Performance (Consequence of Service Failure).
- 4.4 If the Contractor is issued a suspended Service Credit and the Improvement Plan is resolved to the required standard and within the specified timescale then the Service Credit will be avoided. If, in the opinion of the Department, the Improvement Plan has not been resolved in full within the timescales then it will be considered a 'Service Failure', and the Service Credit will be upheld.
- 4.5 The Department reserves the right to use the information presented in the Ofsted inspection reports as evidence in applying any other terms within this Call-off Contract or the Framework Agreement.
- 4.6 The Department reserves the right to include suspension and termination rights linked to outcomes of Ofsted inspection reports.

## 5. QUALITY ASSURANCE REPORTING

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



- 5.1.2. Quality and performance – number of recommendations and Quality Failure.
- 5.2. Ofsted will publish all inspection reports at <https://reports.ofsted.gov.uk/>.

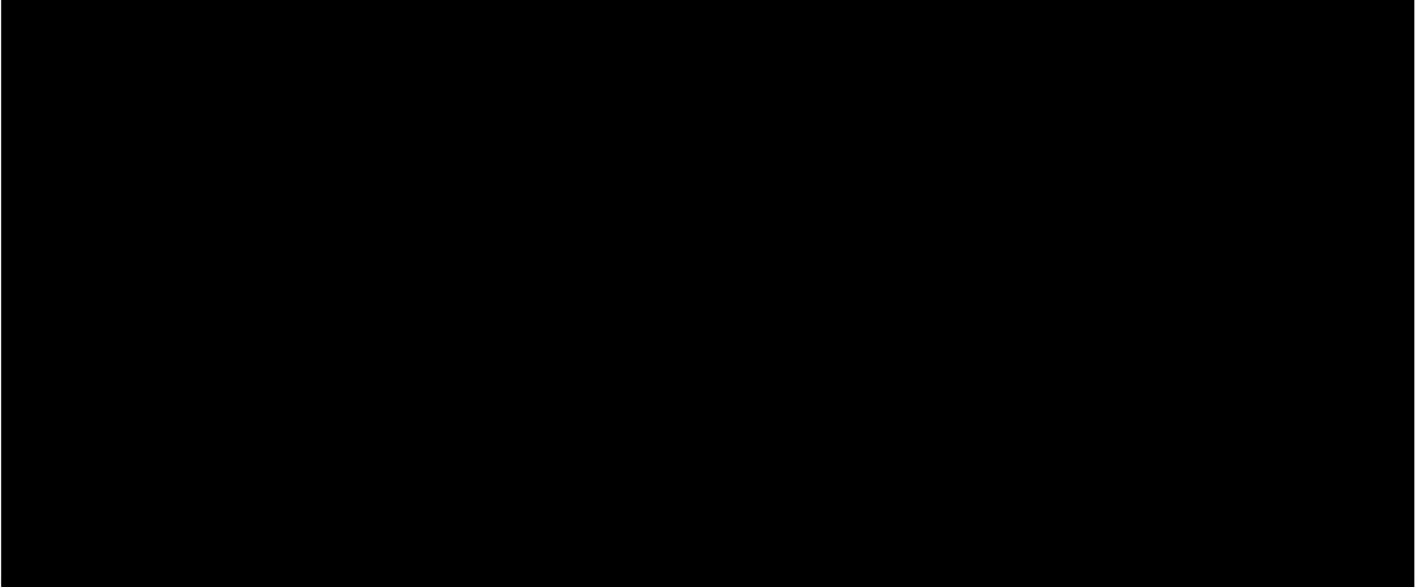
## **6. COMPLAINTS**

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

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

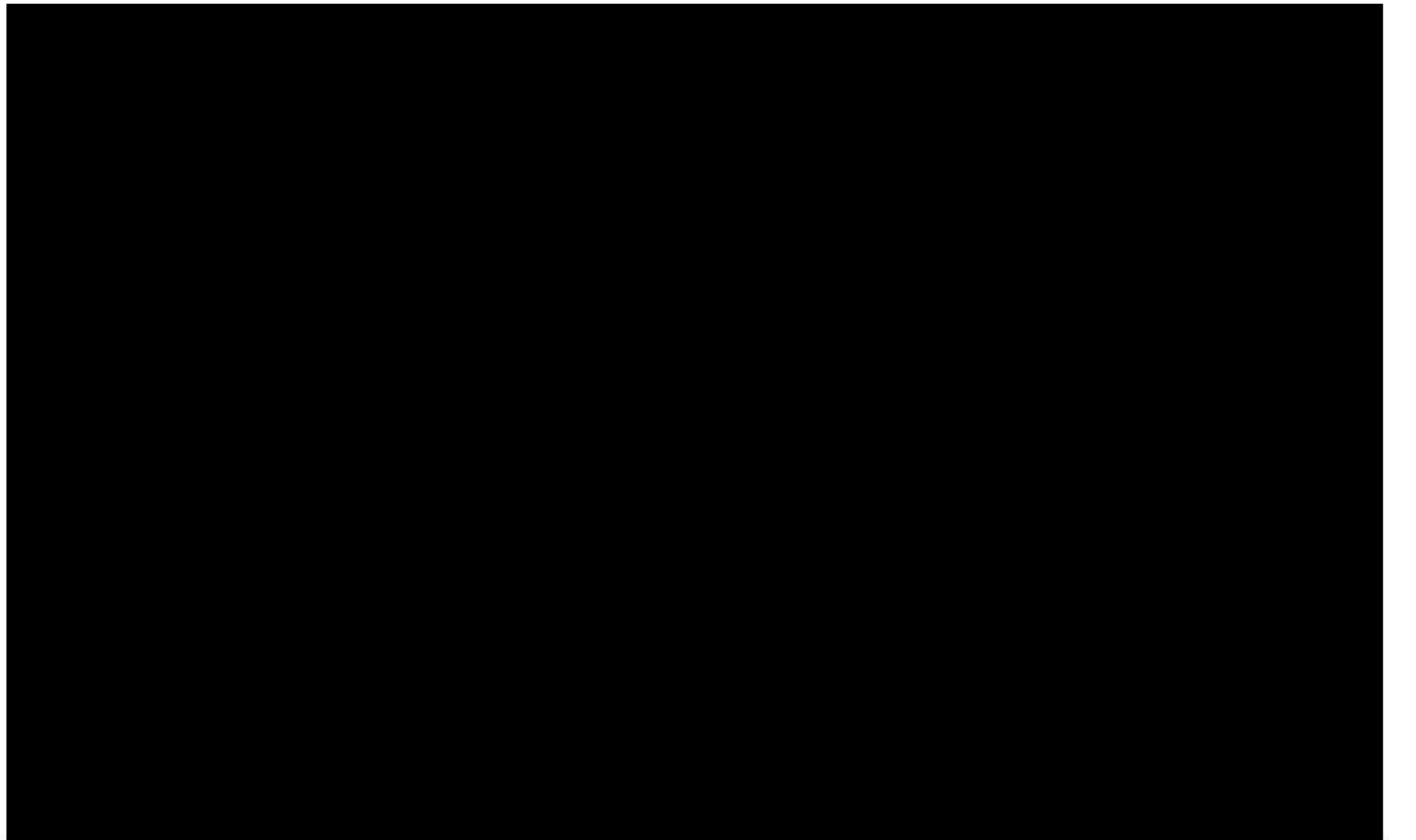
### **Key Personnel**

The individuals listed in the table below are Key Personnel:

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### **Key Sub-Contractors**

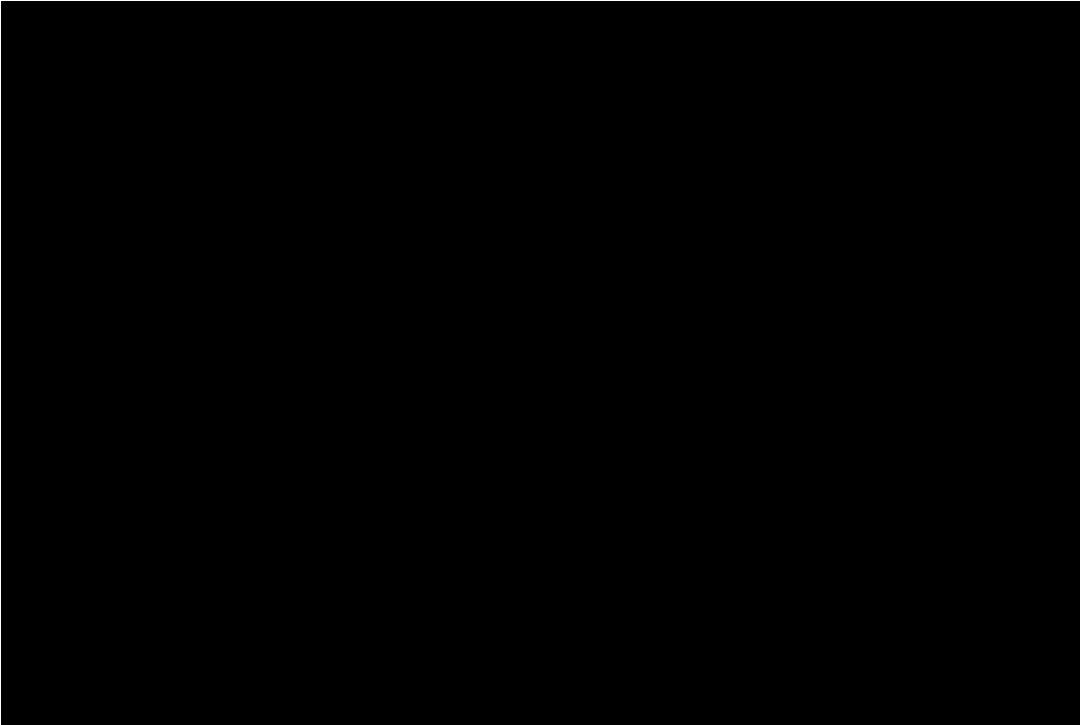
The Contractor may Sub-Contract its obligations under the Contract to the Sub-Contractors listed in the table below:

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

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



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

## SCHEDULE 11 - SERVICE CONTINUITY PLAN

### 1. DEFINITIONS

1.1. In this Schedule, the following definitions shall apply:

<b>“Business Continuity Plan”</b>	has the meaning given in paragraph 2.2.1.2;
<b>“Business Continuity Services”</b>	has the meaning given in paragraph 4.2.2;
<b>“Department”</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:  Government Department; or Non-Ministerial Department;
<b>“Disaster”</b>	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of 3 months or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
<b>“Disaster Recovery Plan”</b>	has the meaning given in paragraph 2.2.1.3;
<b>“Disaster Recovery Services”</b>	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
<b>“Disaster Recovery System”</b>	the system identified by the Contractor in the Contractor Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
<b>“Insolvency Continuity Plan”</b>	has the meaning given in paragraph 2.2.1.4;
<b>“Related Service Provider”</b>	any person who provides services to the Department in relation to this Agreement from time to time;
<b>“Review Report”</b>	has the meaning given in paragraphs 7.2.1 to 7.2.3;
<b>“Service Continuity Plan”</b>	means the plan prepared pursuant to paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan.

### 2. SERVICE CONTINUITY PLAN

2.1. Within 40 Working Days from the Contract Date the Contractor shall prepare and deliver to the Department for the Department’s written approval a Service Continuity Plan, which shall detail the processes and arrangements that the Contractor shall follow to:

- 2.1.1. ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Contractor, any Key Sub-Contractor and/or any Contractor Group member); and

- 2.1.2. the recovery of the Services in the event of a Disaster.
- 2.2. The Service Continuity Plan shall:
  - 2.2.1. be divided into four parts:
    - 2.2.1.1. Part A which shall set out general principles applicable to the Service Continuity Plan;
    - 2.2.1.2. Part B which shall relate to business continuity (the “**Business Continuity Plan**”);
    - 2.2.1.3. Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”);
    - 2.2.1.4. Part D which shall relate to an Insolvency Event of the Contractor, any Key Sub-Contractors and/or any Contractor Group member (the “**Insolvency Continuity Plan**”); and
  - 2.2.2. unless otherwise required by the Department in writing, be based upon and be consistent with the provisions of paragraphs 3, 4, 5 and 6.
- 2.3. Following receipt of the draft Service Continuity Plan from the Contractor, the Department shall:
  - 2.3.1. review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
  - 2.3.2. notify the Contractor in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Department.
- 2.4. If the Department rejects the draft Service Continuity Plan:
  - 2.4.1. the Department shall inform the Contractor in writing of its reasons for its rejection; and the Contractor shall then revise the draft Service Continuity Plan (taking reasonable account of the Department's comments) and shall re-submit a revised draft Service Continuity Plan to the Department for the Department's approval within 20 Working Days of the date of the Department's notice of rejection. The provisions of paragraph 2.3 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

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

- 3.1. Part A of the Service Continuity Plan shall:
  - 3.1.1. set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
  - 3.1.2. provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Department by a Related Service Provider; contain an obligation upon the Contractor to liaise with the Department and (at the Department's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
  - 3.1.3. detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Department and any of its other Related Service Providers in each case as notified to the Contractor by the Department from time to time; contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a

web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Department;

- 3.2. contain a risk analysis, including:
  - 3.2.1. failure or disruption scenarios and assessments and estimates of frequency of occurrence; identification of any single points of failure within the Services and processes for managing the risks arising there from;
  - 3.2.2. identification of risks arising from the interaction of the Services with the Services provided by a Related Service Provider;
  - 3.2.3. identification of risks arising from an Insolvency Event of the Contractor, any Key Sub-Contractors and/or Contractor Group member; and a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
  - 3.2.4. provide for documentation of processes, including business processes, and procedures; set out key contact details (including roles and responsibilities) for the Contractor (and any Sub-Contractors) and for the Department; identify the procedures for reverting to “normal service”;
  - 3.2.5. set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
  - 3.2.6. identify the responsibilities (if any) that the Department has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
  - 3.2.7. provide for the provision of technical advice and assistance to key contacts at the Department as notified by the Department from time to time to inform decisions in support of the Department’s business continuity plans.
- 3.3. The Service Continuity Plan shall be designed so as to ensure that:
  - 3.3.1. the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;
  - 3.3.2. the adverse impact of any Disaster; service failure; an Insolvency Event of the Contractor, any Key Sub-Contractor and/or any Contractor Group member; or disruption on the operations of the Department, is minimal as far as reasonably possible; it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
  - 3.3.3. there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.
- 3.4. The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Contractor Group structure.
- 3.5. The Contractor shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Contractor of this Agreement.
- 4. SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY PRINCIPLES AND CONTENTS**
- 4.1. The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure

continuity of the business operations supported by the Services including, unless the Department expressly states otherwise in writing:

- 4.1.1. the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
  - 4.1.2. the steps to be taken by the Contractor upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2. The Business Continuity Plan shall:
- 4.2.1. address the various possible levels of failures of or disruptions to the Services;
  - 4.2.2. set out the Services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the **“Business Continuity Services”**);
  - 4.2.3. specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
  - 4.2.4. clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

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

- 5.1. The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Contractor ensures continuity of the business operations of the Department supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2. The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3. The Disaster Recovery Plan shall include the following:
  - 5.3.1. the technical design and build specification of the Disaster Recovery System;
  - 5.3.2. details of the procedures and processes to be put in place by the Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
    - 5.3.2.1. data centre and disaster recovery site audits; backup methodology and details of the Contractor's approach to data back-up and data verification;
    - 5.3.2.2. identification of all potential disaster scenarios; risk analysis; documentation of processes and procedures; hardware configuration details; network planning including details of all relevant data networks and communication links; invocation rules;
    - 5.3.2.3. Service recovery procedures; and
    - 5.3.2.4. steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
    - 5.3.2.5. any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;



- 5.3.2.6. details of how the Contractor shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.2.7. access controls to any disaster recovery sites used by the Contractor in relation to its obligations pursuant to this Schedule; and
- 5.3.2.8. testing and management arrangements.

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

### **PRINCIPLES AND CONTENTS**

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

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

- 7.1. The Contractor shall review and update the Service Continuity Plan (and the risk analysis on which it is based):
  - 7.1.1. on a regular basis and as a minimum once every six (6) months;
  - 7.1.2. within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to paragraph 9;
  - 7.1.3. within 14 days of a Financial Distress Event;
  - 7.1.4. within 30 days of a Corporate Change Event; and
  - 7.1.5. where the Department requests any additional reviews (over and above those provided for in paragraphs 7.1.1 to 7.1.4) by notifying the Contractor to such effect in writing, whereupon the Contractor shall conduct such reviews in accordance with the Department's written requirements. Prior to starting its review, the Contractor shall provide an accurate written estimate of the total costs payable by the Department for the Department's approval. The costs of both Parties of any such additional reviews shall be met by the Department except that the Contractor shall not be entitled to charge the

Department for any costs that it may incur above any estimate without the Department's prior written approval.

- 7.2. Each review of the Service Continuity Plan pursuant to paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Contractor within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Department shall reasonably require. The Contractor shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Department a report (a "**Review Report**") setting out:
- 7.2.1. the findings of the review;
  - 7.2.2. any changes in the risk profile associated with the Services; and
  - 7.2.3. the Contractor's proposals (the "**Contractor's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Contractor can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 7.3. Following receipt of the Review Report and the Contractor's Proposals, the Department shall:
- 7.3.1. review and comment on the Review Report and the Contractor's Proposals as soon as reasonably practicable; and
  - 7.3.2. notify the Contractor in writing that it approves or rejects the Review Report and the Contractor's Proposals no later than 20 Working Days after the date on which they are first delivered to the Department.
- 7.4. If the Department rejects the Review Report and/or the Contractor's Proposals:  
the Department shall inform the Contractor in writing of its reasons for its rejection; and the Contractor shall then revise the Review Report and/or the Contractor's Proposals as the case may be (taking reasonable account of the Department's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Contractor's Proposals to the Department for the Department's approval within 20 Working Days of the date of the Department's notice of rejection. The provisions of paragraph 7.3 and this paragraph 7.4 shall apply again to any resubmitted Review Report and Contractor's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 7.5. The Contractor shall as soon as is reasonably practicable after receiving the Department's approval of the Contractor's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Contractor's Proposals. Any such change shall be at the Contractor's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

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

- 8.1. The Contractor shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 8.2, the Department may require the Contractor to conduct additional tests of some or all aspects of the Service Continuity Plan at any

time where the Department considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.

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

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

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

9.2.2. where there is an Insolvency Event of the Contractor and the insolvency arrangements enable the Contractor to invoke the plan;

## SCHEDULE 12 – BREAKAGE COSTS

### 1. DEFINITIONS

1.1. In this Schedule, the following definitions shall apply:

**“Applicable Contractor Personnel”** any Contractor Personnel who: **Personnel”**

(i) at the Termination Date:

- a) are employees of the Contractor;
- b) are Dedicated Contractor Personnel;
- c) have not transferred (and are not in scope to transfer at a later date) to the Department or the Replacement Supplier as a result of the operation of TUPE; and

(ii) are dismissed or given notice of dismissal by the Contractor within:

- d) 40 Business Days of the Termination Date; or
- e) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and

(iii) have not resigned or given notice of resignation prior to the date of their dismissal by the Contractor; and

(iv) the Contractor can demonstrate to the satisfaction of the Department:

- a) are surplus to the Contractor's requirements after the Termination Date notwithstanding its obligation to provide services to its other Departments;
- b) are genuinely being dismissed for reasons of redundancy; and
- c) have been selected for redundancy by the Contractor on objective grounds other than the fact that the Contractor is entitled to reimbursement under this provision in respect of such employees;

**“Assets”** means all assets and rights used by the Contractor to provide the Services in accordance with this Contract but excluding any assets belonging to the Department;

**“Breakage Costs Payment”** an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with paragraph 2;

**“Contract Breakage Costs”** the amounts payable by the Contractor to its Key Sub-Contractors or other third parties (as applicable) for terminating all relevant Key Sub-Contracts as a direct result of the early termination of this Contract;

**“Dedicated Contractor Personnel”** all Contractor Personnel then assigned to the Services or any part of the Services. If the Contractor is unsure as to whether Contractor Personnel are or should be regarded as so assigned,

it shall consult with the Department whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;

- “Former Contractor”** a contractor supplying services to the Department before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such Contractor;
- “Redundancy Costs”** the total sum of any of the following sums paid to Applicable Contractor Personnel, each amount apportioned between the Contractor and the Department based on the time spent by such employee on the Services as a proportion of the total Service duration:
- (a) any statutory redundancy payment; and
  - (b) in respect of an employee who was a Transferring Former Contractor Employee any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Contractor as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Contractor as a result of the operation of TUPE;
- “Relevant Transfer”** a transfer of employment to which TUPE applies;
- “Relevant Transfer Date”** in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
- “Request for Estimate”** a written request sent by the Department to the Contractor, requiring that the Contractor provide it with an accurate estimate of the Breakage Costs Payment that would be payable if the Department exercised its right under clause 10 (Termination) to terminate this Contract for convenience on a specified Termination Date;
- “Termination Estimate”** has the meaning given in paragraph 8.2;
- “Transferring Former Contractor Employees”** in relation to a Former Contractor, those employees of the Former Contractor to whom TUPE will apply on the Relevant Transfer Date.

## **2. BREAKAGE COSTS PAYMENT**

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

- (c) are incurred under arrangements or agreements that are directly associated with this Contract;
- (d) are not Contract Breakage Costs relating to contracts or Sub-Contracts with Affiliates of the Contractor; and
- (e) relate directly to the termination of the Services.

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

- 2.2. The Breakage Costs Payment shall not exceed the lower of:
- (a) the relevant limit set out in Annex 1 (Maximum Breakage Costs); and
  - (b) 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

#### **Redundancy Costs**

- 2.3. The Department shall not be liable under this Schedule for any costs associated with Contractor Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.
- 2.4. Where the Contractor can demonstrate that a member of Contractor Personnel will be made redundant following termination of this Contract, but redeployment of such person is possible and would offer value for money to the Department when compared with redundancy, then the Department shall pay the Contractor the actual direct costs incurred by the Contractor or its Sub-Contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Contractor Personnel.

#### **Contract Breakage Costs**

- 2.5. The Contractor shall be entitled to Contract Breakage Costs only in respect of Sub-Contracts which:
- (a) are not assigned or novated to a Replacement Supplier at the request of the Department); and
  - (b) the Contractor can demonstrate:
    - (i) are surplus to the Contractor's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other Departments; and
    - (ii) have been entered into by it in the ordinary course of business.
- 2.6. The Contractor shall seek to negotiate termination of any Sub-Contracts with the relevant Sub-Contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
- 2.7. Except with the prior written agreement of the Department, the Department shall not be liable for any costs (including cancellation or termination charges) that the Contractor is obliged to pay in respect of:
- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Contractor premises which may arise as a consequence of the termination of this Contract; and/or
  - (b) Assets not yet installed at the Termination Date.

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

- 3.1. The Contractor agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs and Redundancy Costs by:
- (a) the appropriation of Assets, employees and resources for other purposes;

- (b) at the Department's request, assigning any Sub-Contracts to the Department or a third party acting on behalf of the Department; and
- (c) in relation to Sub-Contracts that are not to be assigned to the Department or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

3.2. If Assets, employees and resources can be used by the Contractor for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, and Redundancy Costs payable by the Department or a third party to the Contractor. In the event of any dispute arising over whether the Contractor can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the dispute shall be determined in accordance with the procedure set out in clause 39 (Dispute Resolution).

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

4.1. Any Breakage Costs paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Contractor in relation to any termination by the Department pursuant to clause 10 (Termination) and the Contractor shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

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

5.1. All sums due under this Schedule shall be payable by the Department to the Contractor in accordance with the payment terms set out in Schedule 2 Part 1 (Pricing).

#### **6. SET OFF**

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

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

7.1. If any amount payable under this Schedule (in whole or in part) relates to or arises from any Assets that are to transfer to the Department then, to the extent that the Department makes any payments pursuant to the Exit Plan that the Contractor shall draft in accordance with clause 15.13 of the Contract in respect of such Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

7.2. The value of the Breakage Costs Payment shall be reduced or extinguished to the extent that the Contractor has already received the Charges or the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.

7.3. Any payments that are due in respect of Assets that are to transfer to the Department shall be calculated in accordance with provisions agreed between the Parties and detailed in the Exit Plan.

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

8.1. The Department may issue a Request for Estimate at any time during the Contract Period provided that no more than two (2) Requests for Estimate may be issued in any six (6) month period.

8.2. The Contractor shall within 20 Business Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Breakage Costs that would be payable by the Department based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "Termination Estimate"). The Termination Estimate shall:

(a) be based on the relevant amounts set out in the Financial Model; (b)

include:

- (i) details of the mechanism by which the Termination Payment is calculated;
- (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-



Contract and appropriate supporting documentation; and

(iii) such information as the Department may reasonably require; and

(c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Business Days.

8.3. The Contractor acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Department to terminate this Contract.

**ANNEX 1: MAXIMUM BREAKAGE COSTS PAYMENT**

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

<b>Table 22 – Breakage Costs</b>	
<b>Termination Date</b>	<b>Maximum Breakage Costs Payment</b>
Anytime in the first Contract Year	██████████
Anytime in the second Contract Year	██████████
Anytime in third Contract Year	██████████
Anytime in fourth Contract Year	██████████

## SCHEDULE 13 – STAFF TRANSFER

Not used.

## SCHEDULE 14 - CONTRACTOR'S DIGITAL PLATFORM

### 1. Definitions

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

<b>"Department Property"</b>	the property, other than real property and IPR, including the  Department System, any equipment issued or made available to the Contractor by the Department in connection with this Contract;
<b>"Department Software"</b>	any software which is owned by or licensed to the Department and which is or will be used by the Contractor for the purposes of providing the Services;
<b>"Department System"</b>	the Department's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Department or the Contractor in connection with this Contract which is owned by or licensed to the Department by a third party and which interfaces with the Contractor System or which is necessary for the Department to receive the Services;
<b>"Commercial off the shelf Software" or "COTS Software"</b>	Non-customised software where the IPR may be owned and licensed either by the Contractor or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms
<b>"Contractor System"</b>	means the information and communications technology systems and software used by the Contractor in supplying the Services, including the Provider's hosted website or webpages (relevant to the services), mobile app, COTS software, the Provider's equipment, configuration and management utilities, calibration and testing tools and related cabling.
<b>"Defect"</b>	any of the following:  a) any error, damage or defect to the Contractor's System that affects the delivery of the Services; or  b) any error or failure of code within the software which causes any part of the Contractor's or Department System to malfunction or to produce unintelligible or incorrect results; or

- c) any failure to provide the performance, features and functionality specified by the Contractor (including any adverse effect on response times) regardless of whether or not it prevents the relevant part of the Contractor's System from passing any test required under this Contract; or
- d) any failure of any part of the Contractor's System to operate in conjunction with or interface with any other part of the Contractor's or Department System in order to provide the performance, features and functionality required to deliver the Services;

**"Emergency Maintenance"**

ad hoc and unplanned maintenance provided by the Contractor where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;

**"ICT Environment"**

the Department System and the Contractor System;

**"Licensed Software"**

all and any Software licensed by or through the Contractor, its SubContractors or any third party to the Department for the purposes of or pursuant to this Contract, including any COTS Software;

**"Maintenance Schedule"**

has the meaning given to it in paragraph 5 of this Schedule;

**"Malicious Software"**

any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

**"New Release"**

an item produced primarily to extend, alter or improve the Contractor System or any part of it by providing additional functionality or performance enhancement (whether or not defects in the Software are also corrected) while still retaining the original designated purpose of that part of the Contractor's System;

<b>"Open Source Software"</b>	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
<b>"Operating Environment"</b>	means the Department System and any premises (including the Department Premises, the Contractor's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>a) the Services are (or are to be) provided; or</li> <li>b) the Contractor manages, organises or otherwise directs the provision or the use of the Services; or</li> <li>c) where any part of the Contractor System is situated;</li> </ul>
<b>"Permitted Maintenance"</b>	has the meaning given to it in paragraph 55.2 of this Schedule;
<b>"Software"</b>	Specially Written Software COTS Software and non-COTS Contractor and third party Software;
<b>"Source Code"</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
<b>"Specially Written Software"</b>	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Contractor (or by a Sub-Contractor or other third party on behalf of the Contractor) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;

**2. Licensed software warranty**

2.1. The Contractor represents and warrants that:

2.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software used by or on behalf of the Contractor (and/or any Sub-Contractor) which are necessary for the performance of the Contractor's obligations under this Contract;

2.1.2. all components of the Contractor System (including any Specially Written Software ) shall:

- 2.1.2.1. be free from Defects, material design flaws and programming errors;
- 2.1.2.2. perform in all material respects in accordance with the Annex A of this Schedule; and
- 2.1.2.3. not infringe any IPR; and
- 2.1.2.4. enables changes required to update the Department's operations to be started within 4 weeks.

### 3. Provision of the Digital Platform

#### 3.1. The Contractor shall:

- 3.1.1. ensure that the release of any new COTS Software licensed by the Contractor, or upgrade to any Software in which the Contractor owns the IPR complies with the interface requirements of the Department and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Department three (3) Months before the release of any new COTS Software or Upgrade that could impact the Department's operations when providing the Services;
- 3.1.2. ensure that any COTS Software licensed by the Contractor, or any Software in which the Contractor owns the IPR can integrate with the Departments systems via APIs when the Department's operations require it;
- 3.1.2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Contractor (and/or any Sub-Contractor) are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- 3.1.3. ensure that the Contractor System will be free of all encumbrances;
- 3.1.4. ensure that the Contractor System is fully compatible with any Contractor Software, Contractor System, or otherwise used by the Contractor in connection with this Contract;
- 3.1.5. minimise any disruption to the Services and the ICT Environment and/or the Department's operations when providing the Services;
- 3.1.6. Correct any Defects and security flaws as soon as practicable;
- 3.1.7. Non-functional requirements:
- 3.1.8. ensure that the Digital Platform is fully scalable to meet current and future needs, without having any negative impact upon the performance (and user experience) of the solution;
- 3.1.9. have an understanding of non-functional requirements and build them into the Digital Platform i.e. volumetrics, usability, security, accessibility, interoperability, reliability, maintainability, availability, scalability, portability and compatibility;
- 3.1.10. makes use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. Software that has been assessed under the ITIL Software Scheme must be at least compliant to "Bronze Level", to be deemed acceptable.
- 3.1.11. ensures that where possible each release of the contractors digital platform is checked for defects using automated testing - including OWasp security testing and dependency checking - for more details see <https://www.gov.uk/service-manual/technology/managing-software-dependencies>

Accessibility:

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

#### **Hosting**

- 3.1.14. ensure the Digital Platform is hosted within the UK mainland, ensuring all development, management, support, processing and storage of Departmental Data remains within the UK and in compliance with domestic standards. Hosting within the European Union (EU) is also acceptable, provided that the supplier can demonstrate its adherence to the Information Commissioner's Office's (ICO) regarding preparation for EU exit.
- 3.1.15. Hosting within other non-hostile nations, such as the USA, will be considered on a case-by-case basis. The supplier must demonstrate that they will quickly respond to any future compliance requirements from the information Commissioner's Offices.

#### **4. Audit**

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

#### **5. Maintenance of the ICT Environment**

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

#### **6. Malicious Software**

- 6.1.1. The Contractor shall, throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 6.1.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.
- 6.1.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 6.1.2 shall be borne by the Parties as follows:



- 6.1.3.1. by the Contractor, where the Malicious Software originates from the Contractor Software, the third party Software supplied by the Contractor or the Government Data (whilst the Government Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Department when provided to the Contractor; and
- 6.1.3.2. by the Department, if the Malicious Software originates from the Department Software or the Department Data (whilst the Department Data was under the control of the Department).

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

7.1. The Contractor complies with either;

7.1.1. the HM Government Service Standard [<https://www.gov.uk/service-manual/service-standard>] or;

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

- a) ITIL 4;
- b) ISO/IEC 20000-1:2018 "ITSM Specification for Service Management";
- c) ISO/IEC 20000-2:2019 "ITSM Code of Practice for Service Management";
- d) ISO 10007 "Quality management systems – Guidelines for configuration management"; and
- e) ISO/IEC27031:2011, ISO 22301 and ISO/IEC 24762:2008 in the provision of "IT Service Continuity Strategy" or "Disaster Recovery" plans.

## ANNEX TO SCHEDULE 14 - SERVICE LEVELS

### 1. DEFINITIONS

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

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

### 2. Service Levels

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

- 2.1.1. is likely to or fails to meet any Service Level Performance Measure; or
- 2.1.2. is likely to cause or causes a Critical Service Level Failure to occur, the Contractor shall immediately notify the Department in writing and the Department, in its absolute discretion and without limiting any other of its rights, may:
- 2.1.3. require the Contractor to immediately take all remedial action that is reasonable to mitigate the impact on the Department and to rectify or prevent a Service Level Failure from taking place or recurring; or
- 2.1.4. apply the measures outlined in paragraphs 2.11 to 2.15 of Part 2 of Schedule 2.

### 3. Planned maintenance

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

### 4. Failure to meet the Service Levels

- 4.1. The Contractor shall at all times meet the Service Level Performance Measure for each Service Level.
- 4.2. The Contractor acknowledges that any Service Level Failure shall entitle the Department to the rights set out in Paragraph 1 of this Annex to Schedule 14.
- 4.3. The Contractor shall make MI Reports available to the Department detailing the level of compliance which was achieved against each Service Level Performance Criteria in accordance with the provisions of Schedule 2.

Table A - Service Levels			
Service Level Performance Criteria	Service Level Reference	Description	Required Compliance (%) (Service Level Performance Measure)
Contractor's System	CS1	The Contractor's System shall be resilient and made available 24 hours per day, fifty-two (52) weeks a year, except for agreed downtime and maintenance. Plans should be made if the system is to be offline.	100%
Maintenance and Upgrades	MU1	All essential Scheduled maintenance and/or system upgrades to the Contractor's System shall occur outside the hours of 07:30 to 20:00 GMT (or BST as appropriate) Monday to Friday.	100%
	MU2	The Contractor shall provide prior notification of maintenance and/or system upgrades to the Department .	100%
	MU3	Where applicable (e.g. on a website or app), a message shall be placed on the Contractor's System at least 2 weeks in advance of any maintenance or upgrade taking place, followed by subsequent reminders 48 and 24 hours prior to the maintenance or upgrade.	100%
	MU4	When required the Contractor and Department shall ensure any system maintenance/upgrades are tested prior to the upgraded version release going live.	100%
Correction of Defects	D1	Defects to be corrected within 24hrs of identification.	99%
Remediation of Security Risks	D2	Security Risks to be remediated within 7 days of identification.	99%
Changes to Departments operations	D3	Changes required to facilitate updates to the Department's operations to be started within 4 weeks.	99%