

**THE SECRETARY OF STATE FOR EDUCATION**

**- AND -**

**THE UNIVERSITY OF BRIGHTON**

---

**FRAMEWORK AGREEMENT**

**for the supply of**

**Subject Knowledge Enhancement (SKE) Training Courses**

---

## CONTENTS

---

1.	INTERPRETATIONS	1
2.	SCOPE OF THIS FRAMEWORK AGREEMENT	2
3.	THE SERVICES	2
4.	ORDERING PROCEDURES	3
5.	CHANGES TO THIS FRAMEWORK AGREEMENT	4
6.	COMMUNICATIONS	4
7.	CONTRACT PERIOD, SUSPENSION AND TERMINATION	5
8.	CONSEQUENCES OF TERMINATION SUSPENSION AND EXPIRY	6
9.	WARRANTIES AND REPRESENTATIONS	7
10.	LIABILITY	8
11.	GUARANTEE	8
12.	DATA PROTECTION	8
13.	INTELLECTUAL PROPERTY RIGHTS	9
14.	CONFIDENTIALITY	9
15.	PUBLICITY	10
16.	DISPUTE RESOLUTION	10
17.	RECOVERY OF SUMS DUE	10
18.	DISCRIMINATION	10
19.	CORRUPT GIFTS	10
20.	CONSORTIA	11
21.	TRANSFER AND SUB-CONTRACTING	11
22.	RIGHTS OF THIRD PARTIES	11
23.	AUDIT	11

<b>24.</b>	<b>FREEDOM OF INFORMATION</b>	<b>12</b>
<b>25.</b>	<b>PERFORMANCE MANAGEMENT</b>	<b>13</b>
<b>26.</b>	<b>FRAUD AND IRREGULARITY</b>	<b>13</b>
<b>27.</b>	<b>PROVIDER INSPECTION</b>	<b>13</b>
<b>28.</b>	<b>STATUTORY INVALIDITY</b>	<b>14</b>
<b>29.</b>	<b>SEVERABILITY</b>	<b>14</b>
<b>30.</b>	<b>WAIVER</b>	<b>14</b>
<b>31.</b>	<b>NON-EXCLUSIVITY AND PROVIDER STATUS</b>	<b>14</b>
<b>32.</b>	<b>LAW AND JURISDICTION</b>	<b>15</b>
<b>33.</b>	<b>ENTIRE AGREEMENT</b>	<b>15</b>

## **SCHEDULES**

<b>Schedule 1:</b>	<b>DEFINITIONS</b>
<b>Schedule 2:</b>	<b>MODEL CALL-OFF CONTRACT</b>
<b>Schedule 3:</b>	<b>SPECIFICATION</b>
<b>Schedule 4:</b>	<b>CALL-OFF PROCEDURES</b>
<b>Schedule 5:</b>	<b>CONTRACT CHANGE PROCEDURE</b>
<b>Schedule 6:</b>	<b>FRAMEWORK AGREEMENT PROVIDERS</b>
<b>Schedule 7:</b>	<b>PRICING</b>
<b>Schedule 8:</b>	<b>FINANCIAL DISTRESS</b>
<b>Schedule 9:</b>	<b>PARENT COMPANY GUARANTEE</b>
<b>Schedule 10:</b>	<b>FINANCIAL REPORTS AND AUDIT RIGHTS</b>
<b>Schedule 11:</b>	<b>PROVIDER INSPECTION</b>

**THIS FRAMEWORK AGREEMENT** is made on 23 August 2021

**BETWEEN**

1. **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT acting as part of the Crown ("The Department"); and
  2. **The University of Brighton** whose registered office is at Mithras House, Lewes Road, Brighton BN2 4AT (the "Provider");
- together, the "Parties"

**WHEREAS:**

- a) On 16 January 2021 the Department placed a contract notice on Find a Tender Service seeking invitations to tender from service providers to be appointed to a framework agreement for the supply of training services to improve the subject knowledge of trainee teachers offered a place on an initial teacher training programme.
- b) Following a selection and award process, the Provider and forty (40) other providers (as set out in Schedule 6 (Framework Agreement Providers)) were awarded a place on the framework and requested to enter into the Framework Agreement with the Department.
- c) The Provider has agreed to enter into this Framework Agreement for the supply of the Services to the Department.
- d) A key purpose of the Framework Agreement is to facilitate choice by prospective trainee teachers as to how they received the services, and this principle is reflected in the overall contractual structure.

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

**1. INTERPRETATIONS**

- 1.1. As used in this Framework Agreement: -
  - 1.1.1. the terms and expressions set out in Schedule 1 shall have the meanings set out therein;
  - 1.1.2. the masculine includes the feminine and the neuter;
  - 1.1.3. the singular includes the plural and vice versa; and
  - 1.1.4. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".
- 1.2. In this Framework Agreement words and phrases with a first capital letter (or any derivation thereof) shall have the meanings set out in Schedule 1.
- 1.3. In this Framework Agreement except where the context otherwise requires: -
  - 1.3.1. the masculine includes the feminine and vice-versa;
  - 1.3.2. the singular includes the plural and vice-versa;
  - 1.3.3. a reference in this Framework Agreement to any clause, sub-clause, paragraph, schedule or annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or annex of this Framework Agreement;

- 1.3.4. any reference to this Framework Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.3.5. any reference to any enactment, order, regulation, code, guidance or other similar instrument shall be construed as a reference to the enactment, order, regulation, code, guidance or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.3.6. a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.3.7. headings are for reference only;
- 1.3.8. words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;
- 1.3.9. the Schedules to this Framework Agreement form part of this Framework Agreement; and
- 1.3.10. references to "the Parties" shall be to the parties to this Framework Agreement.
- 1.4. No review, comment or approval by the Department under the provisions of this Framework Agreement shall operate to exclude or limit the Provider's obligations or liabilities under this Framework Agreement (or the Department's rights under this Framework Agreement).
- 1.5. Precedence of Documentation
  - 1.5.1. In the event of any inconsistency between the provisions of the Main Body of this Framework Agreement and the Schedules, or between any of the Schedules, the conflict shall be resolved according to the following descending order of priority:
    - 1.5.1.1.1. the Main Body and Schedule 1 (Definitions);
    - 1.5.1.1.2. Schedule 3 (Specification);
    - 1.5.1.1.3. Schedule 7 (Pricing); and
    - 1.5.1.1.4. the remaining Schedules equally.

## **2. SCOPE OF THIS FRAMEWORK AGREEMENT**

### **FRAMEWORK AGREEMENT**

- 2.1. This Framework Agreement shall take effect on the Commencement Date and no Call-Off Contract or Orders thereafter shall be entered until that date.
- 2.2. This Framework Agreement governs the overall relationship of the Department with the Provider with respect to the provision of the Services.
- 2.3. The Framework Agreement is a multi-Provider arrangement and details of all the Providers, including the Provider, that have been appointed to the Framework Agreement are set out in Schedule 6 (Framework Agreement Providers).

## **3. THE SERVICES**

- 3.1. The Provider shall make the Services available on and subject to the terms of this Framework Agreement. When a Service is the subject of an Order by the Department, it will be referred to in the Call-Off Contract as an Ordered Service.
- 3.2. All Orders shall be placed in accordance with the Ordering Procedures (Schedule 4)

and the payment for the Services will be calculated using the Pricing Schedule (Schedule 7).

- 3.3. All Ordered Services shall be subject to the terms and conditions prescribed in the Model Call-Off Contract including where required any Additional Clauses as set out in the Model Call-Off Contract.
- 3.4. The Department shall maintain and keep up to date the Specification (Schedule 3) throughout the Contract Period. Any material amendment to the Specification (Schedule 3) shall be subject to the Contract Change Procedures and may lead to an adjustment to the Pricing (Schedule 7).
- 3.5. The Provider may provide the Services to Participants who have been offered a place on an ITT Programme by an ITT Provider conditional upon undertaking a SKE Course.

#### **4. ORDERING PROCEDURES**

##### **THE FIRST CALL-OFF CONTRACT**

- 4.1. At the same time as entering into this Framework Agreement the Parties shall enter into the First Call-Off Contract in the form of the standard Model Call-Off Contract as set out in Schedule 2.
- 4.2. The First Call-Off Contract shall commence on the date specified in the First Call-Off Contract and shall expire on the Expiry Date and the terms of the First Call-Off Contract shall govern the provision of the Services under all the Orders made under the First Call-Off Contract.
- 4.3. The entering into by the Parties of the First Call-Off Contract is no guarantee of any Order for Services by the Department. Following the entering into of the First Call-Off Contract the Department is entitled but not obliged to Order Services in accordance with the Call-Off Procedures (Schedule 4) and the First Call-Off Contract.

##### **FURTHER CALL-OFF CONTRACTS**

- 4.4. The Department is entitled, but not obliged, to enter into further Call-Off Contracts in accordance with the Call-Off Procedures (Schedule 4)
- 4.5. Any further Call-Off Contract shall be in the form of the standard Model Call-Off Contract as set out in Schedule 2.
- 4.6. Any further Call-Off Contract entered into under this Framework Agreement shall commence on the date specified in that Call-Off Contract and shall expire no later than the date specified in the Call-Off Contract.

##### **ALL CALL-OFF CONTRACTS**

- 4.7. The Provider shall ensure that any Call-Off Contract entered into under this Framework Agreement and any subsequent Order made under a Call-Off Agreement shall not:
  - 4.7.1. exceed the limits and scope of this Framework Agreement;
  - 4.7.2. include any terms and conditions that substantially amend or alter the terms and conditions set out in the relevant Model Call-Off Contract.
- 4.8. The Provider shall invoice the Department for the Services it has delivered in accordance with the terms of the Call-Off Contract.
- 4.9. The Provider shall not accept an Order except in accordance with the Ordering Procedures.
- 4.10. Orders may be for one or more for the delivery of the Services to one or more

Participants who have been offered a place on an ITT Programme by an ITT Provider conditional upon attending a SKE Course.

## **5. CHANGES TO THIS FRAMEWORK AGREEMENT**

- 5.1. No amendment to the provisions of this Framework Agreement shall be effective unless it is in writing and signed by each of the Parties.
- 5.2. For these purposes a “Change” shall include any amendment to this Framework Agreement and any material amendments to the Specification (Schedule 3). For each Change that is agreed by the Department and the Provider pursuant to this Clause 5, this Framework Agreement or the Specification (Schedule 3) shall be amended to the extent necessary to give effect to that Change. Unless and until such amendment is made in accordance with this Clause 5, no Change shall be considered effective, and this Framework Agreement and the Specification (Schedule 3) shall not in any way be considered to have been varied.
- 5.3. In the event that a Change is implemented such Change has an effect on the Model Call-Off Contract (Schedule 2), the Model Call-Off Contract shall be amended accordingly.
- 5.4. To the extent that a Change affects Call-Off Contracts and Ordered Services that the Parties have already entered into prior to the Change, the Provider and the Department shall adhere to the procedure for contract change set out in the relevant Call-Off Contract.

## **5A SKE FUNDING**

- 5A.1 The availability of SKE Funding is subject to overall budget availability and Spend Controls that may be implemented by the Department from time to time.
- 5A.2 The Department, acting reasonably, reserves the rights to implement Spend Controls to change or discontinue elements of the SKE Programme.

## **6. COMMUNICATIONS**

- 6.1. Except as otherwise expressly provided, no communication from one Party to the other shall have any validity under this Framework Agreement unless made in writing by or on behalf of the party sending such communication.
- 6.2. Any notice or other communication whatsoever which either the Department or the Provider are required or authorised by this Framework Agreement to give or make to the other shall be given or made by first class post in a prepaid letter, addressed to the other at the address specified in Clause 6.3. Such notice or communication shall be deemed, for the purposes of this Framework Agreement, to have been given or made two (2) Working Days after dispatch by the sender.
- 6.3. For the purposes of Clause 6.2 the address of each party shall be as follows

**<REDACTED>**

Sanctuary Buildings,  
Great Smith Street,  
London, SW1P 3BT

**<REDACTED>**

Mithras House, Lewes Road, Brighton BN2 4AT



## **7. CONTRACT PERIOD, SUSPENSION AND TERMINATION**

### **CONTRACT PERIOD**

- 7.1. This Framework Agreement shall commence on the Commencement Date and shall expire on the Expiry Date unless terminated earlier pursuant to this Clause 7 (the "Contract Period").

### **TERMINATION**

- 7.2. The Department may at any time by notice in writing terminate this Framework Agreement, without compensation to the Provider, as from the date of service of such notice, or a later date specified in such notice, if:

- 7.2.1. there is a change of control, as defined by Section 1124 of the Corporation Tax Act 2010, in the Provider or its Parent Company where the proposed new owner has:

7.2.1.1.1. been convicted of a criminal offence relating to the conduct of its business or profession including but not limited to under the Bribery Act 2010; or

7.2.1.1.2. committed an act of grave misconduct in the course of its business or profession; or

7.2.1.1.3. failed to comply with any obligations relating to the payment of any taxes or social security contributions; or

7.2.1.1.4. made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or

7.2.1.1.5. failed to obtain any necessary licences or membership of any relevant body; or

7.2.1.1.6. the Provider being an individual, or where the Provider is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport so to do, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986, or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him on behalf of his creditors, or any similar event occurs under the law of any other jurisdiction; or

7.2.1.1.7. the Provider, being a company, passes a resolution, or the Court makes an order that the Provider or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Provider or the Parent Company (or an application for the appointment of an

administrator is made or notice to appoint an administrator is given in relation to the Provider or the Parent Company), or a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Provider or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; or

- 7.3. The circumstances detailed in Clause 9.3.1 or Clause 9.3.2 arise.
- 7.4. The Department may at any time by notice in writing terminate this Framework Agreement immediately, without compensation to the Provider, if the Provider is in material default of any obligation under this Framework Agreement and:
  - 7.4.1. the material default is capable of remedy and the Provider shall have failed to remedy the material default within thirty (30) Days of written notice to the Provider specifying the material default and requiring its remedy; or
  - 7.4.2. the material default is not capable of remedy.
- 7.5. The Provider shall promptly notify the Department in writing on each occasion of the occurrence of any of the events specified in Clause 7.2.
- 7.6. If any funding, including but not limited to SKE Funding, from governmental or other sources for the provision of the Services, or for a programme or project to which the provision of the Services relates is withdrawn, reallocated or no longer available in such a way that this Framework Agreement cannot reasonably continue the Department may terminate the Framework Agreement by serving a minimum of 3 months' written notice on the Provider.
- 7.7. The Department may, in any event, terminate this Framework by serving a minimum of 6 months' written notice on the Provider.
- 7.8. The termination of this Framework Agreement shall be without prejudice to any rights of either party that shall have accrued before the date of such termination.

#### **SUSPENSION**

- 7.9. The Department may at any time, by notice to the Provider in writing, suspend the Provider from the Framework Agreement, as from the date of service of such notice, or a later date specified in such notice;
  - 7.9.1. in accordance with the terms of the Model-Call Off Agreement Schedule 2 Part 2 (Performance);
  - 7.9.2. In accordance with the terms of this Framework Agreement, Schedule 11, (Ofsted);
  - 7.9.3. During any investigation by the Department of any fraud or irregularity pursuant to clause 25.
  - 7.9.4. For any period during which the Provider is required to remedy any material default.

#### **8. CONSEQUENCES OF TERMINATION SUSPENSION AND EXPIRY**

- 8.1. Notwithstanding the service of a notice to terminate or of suspension in relation to this Framework Agreement, the Provider shall continue to fulfil its

obligations under this Framework Agreement until the date of termination of this Framework Agreement or such other date as required under this Clause 8.

- 8.2. A termination or suspension of, or suspension from, this Framework Agreement shall not cause the First or Further Call-Off Contracts or and Orders under them to terminate automatically. For the avoidance of doubt, the Call-Off Contracts and any Orders shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 8.3. The provisions of Clauses 8, 10, 12, 14, 17 and 22 and without limitation to the foregoing, any other provision of this Framework Agreement which by its terms is to be performed or observed notwithstanding termination or expiry or which is expressed to survive termination or expiry shall survive the termination or expiry of this Framework Agreement.

## **9. WARRANTIES AND REPRESENTATIONS**

- 9.1. The Provider warrants and represents that:
  - 9.1.1. it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform this Framework Agreement and that this Framework Agreement is executed by a duly authorised representative of the Provider;
  - 9.1.2. as at the Commencement Date of this Framework Agreement, all information contained in its final tender remains true, accurate, and not misleading save as may have been specifically disclosed in writing to the Department prior to the execution of this Framework Agreement;
  - 9.1.3. this Framework Agreement shall be performed in compliance with all Legislation as amended from time to time;
  - 9.1.4. it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm and/or trojan horse) into systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Department;
  - 9.1.5. on behalf of itself and its Affiliates or Parent Company, in the three (3) years prior to the Commencement Date of this Framework Agreement and continuing throughout the Contract Period:
    - 9.1.5.1.1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
    - 9.1.5.1.2. it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
- 9.2. it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement.
- 9.3. The Provider acknowledges that:
  - 9.3.1. any breach of the warranties in Clause 9.1 (other than a breach of Clause 9.1.5) shall be remedied as a matter of urgency at no cost to the Department. Failure to remedy the breach (if capable of remedy) so as to comply with Clause 9.1 within five (5) Working Days of a notice served on the Provider

specifying the breach and requiring its remedy by the Department shall constitute a material breach of this Framework Agreement entitling the Department to terminate in accordance with Clause 7.3; and

- 9.3.2. a breach of its obligations in Clause 9.1.5 shall afford the Department the right to immediately terminate this Framework Agreement without liability or payment of any charges or costs whatsoever.
- 9.4. Except as expressly stated in this Framework Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by law.
- 9.5. The Provider and the Department each warrant to the other that they have undertaken all requisite corporate and other action to approve the entering into and performance of this Framework Agreement.

## **10. LIABILITY**

- 10.1. Subject to Clauses 10.2, 10.3 and 10.4 the Parties shall be liable to each other for Direct Losses, whether in respect of breach of contract, misrepresentation, negligence or otherwise.
- 10.2. Nothing in this Framework Agreement shall limit or exclude a party's liability for:
  - 10.2.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 10.2.2. fraud or fraudulent misrepresentation; or
  - 10.2.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 10.3. Neither party to this Framework Agreement shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with this Framework Agreement.
- 10.4. For the avoidance of doubt the provisions of Clause 10.3 shall not be taken as limiting the right of the Department to claim for:
  - 10.4.1. any additional operational and/or administrative costs and expenses arising as a direct consequence of a breach;
  - 10.4.2. any wasted expenditure or charges rendered unnecessary and/or incurred by the Department arising as a direct consequence of a breach.
- 10.5. Each Party's aggregate liability under Clause 10.1 for the Contract Period shall be limited to five hundred thousand pounds (£500,000).

## **11. GUARANTEE**

- 11.1. Not applicable.

## **12. DATA PROTECTION**

- 12.1. The Provider shall comply at all times with the Data Protection Requirements as set out in the Model Call-Off Contract.

### **13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1. The Provider shall comply at all times with the Intellectual Property Rights as set out in the Model Call-Off Contract.

### **14. CONFIDENTIALITY**

- 14.1. The Department and the Provider acknowledge that any Confidential Information originating from:
- 14.1.1. the Department, their servants or agents is the property of the Department; and
  - 14.1.2. the Provider, its employees, servants or agents is the property of the Provider.
- 14.2. The Provider and the Department shall procure that:
- 14.2.1. any person employed or engaged by them shall only use Confidential Information for the purposes of this Framework Agreement and shall only disclose any Confidential Information to any third party with the prior written consent of the originator of that Confidential Information;
  - 14.2.2. any person employed or engaged by them in connection with this Framework Agreement shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of the originator of that Confidential Information;
  - 14.2.3. they shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Framework Agreement by their employees, servants, agents or sub-contractors.
  - 14.2.4. without prejudice to the generality of the foregoing neither they nor any person engaged by them whether as a servant or a consultant or otherwise shall use the Confidential Information for the solicitation of business from the other or from any third party.
- 14.3. The provisions of Clause 14.1 and Clause 14.2 shall not apply to any information which:
- 14.3.1. is or becomes public knowledge other than by breach of this Clause 14; or
  - 14.3.2. is in the possession of the recipient without restriction in relation to disclosure before the date of receipt from the disclosing party; or
  - 14.3.3. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
  - 14.3.4. is independently developed without access to the Confidential Information; or
  - 14.3.5. must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- 14.4. Nothing in this Clause 14 shall be deemed or construed to prevent the Department from disclosing any Confidential Information obtained from the Provider:
- 14.4.1. to any department, office or agency of Her Majesty's Government.
  - 14.4.2. to any consultant, contractor or other person engaged by the Department in connection herewith, provided that the Department shall have required that

such information be treated as confidential by such consultant, contractor or other person, together with their servants, including requiring servants to enter into a confidentiality agreement (to which the contractor shall also be a party) prior to disclosure of the Confidential Information whereupon the Department shall have no further liability for breach of confidentiality in respect of consultants, contractors or other people; and

- 14.5. Nothing in this Clause 14 shall prevent the Provider or the Department from using data processing techniques, ideas and know-how gained during the performance of this Framework Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the Department or the Provider of any Intellectual Property Rights.

## **15. PUBLICITY**

- 15.1. Neither party shall, by itself, its employees or agents (and each party shall procure that none of its sub-contractors shall) communicate with representatives of the press, television, internet, radio or other communications media on any matter concerning this Framework Agreement save as may be provided for in advance in writing by the parties from time to time.

## **16. DISPUTE RESOLUTION**

- 16.1. The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Framework Agreement. This shall include escalating the dispute to a more senior level within both the Department and the Provider with a view to reaching a settlement.
- 16.2. Any dispute not capable of resolution by the parties in accordance with the terms of Clause 16 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 16.3. No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Framework Agreement 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.

## **17. RECOVERY OF SUMS DUE**

- 17.1. If any sum of money shall be due from the Provider, the same may be deducted from any sum then due or which at the time thereafter may become due to the Provider under any agreement with the Department.

## **18. DISCRIMINATION**

- 18.1. The Provider shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof or any other Law relating to discrimination in employment.
- 18.2. The Provider shall take all reasonable steps to secure the observance of the provisions of Clause 18.1 by the Sub-Contractors employed in the execution of this Framework Agreement.

## **19. CORRUPT GIFTS**

- 19.1. The Provider shall not offer or give or agree to give any person acting for and on behalf of the Department any gift or consideration of any kind as an inducement or



reward for doing, forbearing to do, or for having done or forborne to do any act in relation to the obtaining or execution of this Framework Agreement.

- 19.2. Any breach of Clause 19.1 by the Provider or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Provider) or the commission of any offence by the Provider or by anyone employed by him or acting on his behalf under the Bribery Act 2010, in relation to this Framework Agreement shall entitle the Department to terminate this Framework Agreement and recover from the Provider the amount of any loss resulting from such termination and/or to recover from the Provider the amount or value of any such gift or consideration.
- 19.3. Any dispute, difference or question arising in respect of the interpretation of this Clause 19, the right of the Department to terminate this Framework Agreement or the amount or value of any such gift or consideration shall be decided by the Department, whose decision shall be final and conclusive.

## **20. CONSORTIA**

- 20.1. If the Contractor is a Consortium it shall comply with the terms of this clause 20.
- 20.2. The Contractor may appoint additional or replacement Consortium Members to assist it in carrying out its obligations under the Contract subject to compliance with clause
- 20.3. No new person or entity may become a Consortium Member until:
  - 20.3.1. the DFE has given its prior written consent to the new Consortium Member;
  - 20.3.2. the new Consortium Member has signed a Deed of Adherence; and
  - 20.3.3. a copy of the Deed of Adherence has been given to the DFE.
- 20.4. The Contractor shall promptly inform the DFE if and how any Consortium Member breaches the terms of the Consortium Agreement

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

- 21.1. This Framework Agreement is personal to the Provider. Save in respect of an assignment in whole to an Affiliate of the Provider in the event of a solvent reorganisation, amalgamation or reconstruction of the Provider or such Affiliate, the Provider shall not assign, novate, sub-contract or otherwise dispose of this Framework Agreement or any part thereof without the previous consent in writing of the Department.

## **22. RIGHTS OF THIRD PARTIES**

- 22.1. This Framework Agreement 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 Department and/or the Provider.

## **23. AUDIT**

- 23.1. The Provider shall document, implement and comply with processes, and keep or cause to be kept, for 6 years after the end of the term , or so long a period as may be agreed between the Parties, full and accurate Records, such that the Department (or their statutory auditors or authorised agents) may verify that the Provider has complied and is complying with its obligations under this Framework Agreement.
- 23.2. The Provider agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the

## Services

- 23.3. The Provider shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Provider's Records and to provide such copies and oral or written explanations as may reasonably be required.
- 23.4. The Provider (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Department and for carrying out examinations into the economy, efficiency and effectiveness with which the Department has used its resources. The Provider shall provide such explanations as are reasonably required for these purposes.
- 23.5. Further to the provisions of Clause [Error! Reference source not found.](#)23.3, the Provider shall provide, or procure the provision of, all reasonable assistance at all times for the purposes of carrying out an audit of the Provider's compliance with this Framework Agreement as well as an audit of all activities, performance, security and integrity in connection therewith.
- 23.6. Without prejudice to the foregoing, in the event of an investigation into suspected fraudulent activity or other impropriety by the Provider, the Department reserves for itself or any statutory auditor of the Department the right of immediate access to the premises and documents described in Clauses 23.1 and 23.3 and the Provider agrees to render all necessary assistance to the conduct of such investigation.
- 23.7. The Department shall use all reasonable endeavours to ensure that its auditors cause the minimum amount of disruption to the business of the Provider and shall comply with the building regulations and security requirements of the Provider while on the Provider's premises.
- 23.8. The Provider shall comply with the provisions of Part A of Schedule 10 (Financial Reports and Audit Rights) in relation to the maintenance of Open Book Data.
- 23.9. The Parties shall comply with the provisions of Part B of Schedule 10 (Financial Reports and Audit Rights) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

## 24. FREEDOM OF INFORMATION

- 24.1. The Provider acknowledges that the Department is subject to the requirements of FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department to enable the Department to comply with its Information disclosure obligations.
- 24.2. The Provider shall and shall procure that its Sub-Contractors shall:
  - 24.2.1. transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - 24.2.2. provide the Department with a copy of all Information in its possession, or power in the form that the Department require within five (5) Working Days (or such other period as the Department may specify) of the Department's request; and
  - 24.2.3. provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.



- 24.3. The Department shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations.
- 24.4. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Department.
- 24.5. The Provider acknowledges that the Department may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the Provider, or despite having taken the Provider's views into account.
- 24.6. The Provider shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

## **25. PERFORMANCE MANAGEMENT**

- 25.1. The performance measures that relate to the provision of the Services shall be as set out in the Call-Off Contract.

## **26. FRAUD AND IRREGULARITY**

- 26.1. The Provider shall notify the Department immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Services including but not limited to cases of:
  - 26.1.1. Collusion with employees of the Department;
  - 26.1.2. Computer fraud;
  - 26.1.3. The submission to the Department of inaccurate, incomplete, misleading or falsified information for the purpose of making a Charge or receiving Bursary Payments to the Department;
  - 26.1.4. Fraud involving ITT Providers and/or sub-contractors and/or Participants;
  - 26.1.5. Any non-compliance with the requirements of the Call-Off Contract, Schedule 2 Part 1 (Price) in relation to the claiming, receipt of and administration of Bursary Payments,

Provided nothing in this clause 26 shall require the Provider to do anything which may cause it to infringe the any law.

- 26.2. Where the Department has reasonable cause to believe that any fraud or irregularity has occurred in relation to the delivery of the Services under a Call-Off Contract and / or the payment of the Charges and /or the flow down of Bursary Payments by the Department under a Call-Off Contract the Department shall have the right of access to the Provider's premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records and to interview the Provider.
- 26.3. The Department reserves the right to recover from the Provider any Charges and/or Bursary Payments paid where the payment of the Charges and/or Bursary Payments or any arrangement between the Provider and an ITT Provider breaches the terms of the Framework Agreement or the provisions of Schedule 2 Part 2 (Price) of the Call-Off Contract and/or was based on wrong, inaccurate or misleading information.

## **27. PROVIDER INSPECTION**

- 27.1. The provisions of Schedule 11 (Provider Inspection) shall apply.

## **28. STATUTORY INVALIDITY**

- 28.1. The Department and the Provider expressly agree that should any limitation or provision contained in this Framework Agreement including the Model Call-Off Contract be held to be invalid under any particular statute or law, or any rule, regulation or bye-law having the force of law, it shall to that extent be deemed to be omitted but, if the Department or the Provider thereby become liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out in this Framework Agreement.

## **29. SEVERABILITY**

- 29.1. Subject to the provisions of Clause 28 (Statutory Invalidity), if any provision of this Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Framework Agreement had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement, the Department and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

## **30. WAIVER**

- 30.1. The failure of the Provider or the Department to insist upon strict performance of any provision of this Framework Agreement or to exercise any right or remedy to which it is entitled under this Framework Agreement, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Framework Agreement.
- 30.2. A waiver of any default shall not constitute a waiver of any other default.
- 30.3. No waiver of any of the provisions of this Framework Agreement shall be effective unless it is expressed to be a waiver communicated by notice, in accordance with the provisions of Clause 6 (Communications).

## **31. NON-EXCLUSIVITY AND PROVIDER STATUS**

- 31.1. For the purposes of this Framework Agreement, the Department shall:
- 31.1.1. at all times be entitled to enter Call-Off contracts with providers other than the providers who have been appointed to the Framework Agreement;
  - 31.1.2. not be deemed to make any representation or warranty to the Provider.
- 31.2. No guarantee or representation shall be deemed to have been made by the Department in respect of the total quantities or values of the Services to be ordered under this Framework Agreement. Further, the Provider acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such guarantee or representation.
- 31.3. The Department reserves, and anticipates exercising, the right to conduct further procurements during the Contract Period, for the purpose of appointing additional and new Providers to deliver the Services on the same terms as this Framework Agreement. The Department may undertake future procurements on an annual basis or at such intervals and on as many occasions as it considers necessary. In the event that the Department conducts such procurements it shall notify all the Providers appointed to this Framework Agreement and, following the letting of any further framework agreement shall update the Directory of Providers to reflect any new and additional appointments.

- 31.4. Where the Department lets any further framework agreement or agreements, pursuant to clause 31.3, such framework agreements shall have the same Expiry Date as this Framework Agreement.
- 31.5. In carrying out its obligations under the Framework Agreement and Orders placed under it the Provider agrees that it will be acting as principal and not as the agent of the Department.
- 31.6. In the event of a Financial Distress Event, the provisions in Schedule 8 (Financial Distress) shall apply.

## **32. LAW AND JURISDICTION**

- 32.1. The Department and the Provider accept the exclusive jurisdiction of the English courts and agree that this Framework Agreement is to be governed by and construed according to English law.

## **33. ENTIRE AGREEMENT**

- 33.1. This Framework Agreement constitutes the entire understanding between the Department and the Provider relating to the subject matter.
- 33.2. Neither the Department nor the Provider have relied upon any representation or promise except as expressly set out in this Framework Agreement.
- 33.3. Both the Department and the Provider unconditionally waive any rights they may have to claim damages against the other on the basis of any statement made by the other (whether made carelessly or not) not set out or referred to in this Framework Agreement (or for breach of any warranty given by the other not so set out or referred to) unless such statement or warranty was made or given fraudulently.
- 33.4. Both the Department and the Provider unconditionally waive any rights they may have to seek to rescind this Framework Agreement on the basis of any statement made by the other (whether made carelessly or not) whether or not such statement is set out or referred to in this Framework Agreement unless such statement was made fraudulently.

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

Authorised to sign for and on  
behalf of the Secretary of

State for Education

Signature

**<REDACTED>**

Name in CAPITALS **<REDACTED>**

Position in Organisation

Address in full: Sanctuary Buildings,  
Great Smith Street,  
London, SW1P 3BT

Authorised to sign for and on  
behalf of The University of  
Brighton

Signature

**<REDACTED>**

Name in CAPITALS

**<REDACTED>**

Position in Organisation

Address in full

## **SCHEDULE 1 – DEFINITIONS**

Additional Clauses	means the Clauses set out in Schedule 3 (Additional Clauses) of the Model Call-Off Contract;
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;
Approved Participant List	means the list maintained by the Department of all those Participants whose attendance on a SKE Course has been approved by the Department in accordance with the Ordering Procedures;
Bursary Payments	means the bursary payments to eligible Participants in accordance with the Call-Off Contract, Schedule 2 Part 1 (Price)
Call-Off Contract	The Model Call-Off Contract set out in Schedule 2;
Central Government Body	<p>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 of National Statistics;</p> <ul style="list-style-type: none"><li>(a) Government Department;</li><li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>(c) Non-ministerial Department; or</li><li>(d) Executive Agency;</li></ul>
Change	any change as set out in Clause 5.2 (Changes to this Framework Agreement)
Charges	means the charges payable by the Department for the performance of the Ordered Services by the Provider as set out in the Order and payable in accordance with the Model Call-Off Contract;
Commencement Date	means the date agreed in writing by the Parties;
Confidential Information	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of either party, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is

	marked as “confidential”) or which ought reasonably to be considered to be confidential;
Consortium	means an association of 2 or more persons acting together to deliver the Services but excludes Sub-Contractors.
Consortium Agreement	<p>means, if the Contractor is a Consortium, an agreement:</p> <p>(a) signed by all the Consortium Members as at the Effective Date; and</p> <p>(b) adhered to by Consortium Members who join the Consortium after the Effective Date by signing a Deed of Adherence</p> <p>which sets out, amongst other things, how the Consortium Members will work together to deliver the Services.</p>
Consortium Member	means a member of a Consortium (if any).
Contract Change Notice (CCN)	means a Contract Change Notice in the form set out at the Annex 1 to Schedule 5 (Contract Change Procedure);
Contract Change Procedures	means the procedures specified in Schedule 5 (Contract Change Procedure) for making changes to this Framework Agreement;
Contract Period	means the term of this Framework Agreement as set out in Clause 7.1, unless terminated earlier in accordance with the provisions of Clauses 7.2 or 7.4;
Crown Body	means any department, office or agency of the Crown;
Direct Losses	means all damage, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), loss of use, proceedings, demands and charges whether arising under statute, contract or at common law but to avoid doubt, excluding Indirect Losses;
Directory of Providers	means the directory of all the framework Providers, held and maintained by the Department and made available to Participant and ITT Providers to enable a Participant to select a Provider;
Dispute	any difference or dispute between the Department and the Provider arising out of or in connection with this Framework Agreement (including any question as to the validity or interpretation of this Framework Agreement and including any dispute arising before or after termination of this Framework Agreement);
Environmental Information Regulations	mean the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the

	Information Commissioner or relevant Government Department in relation to such regulations;
European Economic Area	from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;
Expiry Date	means the fourth anniversary of the Commencement Date;
Financial Distress Event	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 8 (Financial Distress)
Find a Tender service	means the UK system to publish tendering opportunities for high value contracts in the UK's public and utilities sectors;
First Call-Off Contract	means the call-off contract entered into by the Department and the Provider pursuant to clause 4.1;
First SKE Academic Year	means the 12 month period starting on 1 October 2021 and ending on 30 September 2022;
Framework Agreement	means this Framework Agreement, comprised of the Clauses and Schedules;
Framework Manager	means a representative of either party responsible for ensuring the parties are performing their obligations under this Framework Agreement, until notified otherwise in writing the Department's Framework Manager shall be <REDACTED>;
Funding and SKE Funding	means the anticipated government funding for the SKE Programme which will be deployed to meet the Charges.
Further Call-Off Contract	means any call-off contract entered into by the Department and the Provider pursuant to clause 4.4;
FOIA	means 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;
GDPR	Means 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 Provider) or any Sub-Contractor under the same or similar circumstances;

Guarantee	Not applicable;
Guarantor	Not applicable;
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;
Indirect Losses	means loss of profits, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;
Information	has the meaning given under section 84 of the Freedom of Information Act 2000;
Intellectual Property Rights	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	means Law Enforcement Directive (Directive (EU) 2016/680)
Legislation	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
Model Call-Off Contract	means the model Call-Off Contracts in Schedule 2 which specify the terms and conditions for Call-Off Contracts (as such may be amended from time to time);
Ofsted	means the office for standards in education, children's services and skills. Ofsted inspects services providing education and skills for learners of all ages;
Open Book Data	has the meaning given to it in Schedule 10 (Financial Reports and Audit Rights);
Order	means an order for Services served by the Department on the Provider in accordance with the Call-Off Procedures (Schedule 2);
Ordering Procedures	means the procedure for ordering Services as set out in the Call-Off Procedure (Schedule 2)
Ordered Services	means any Services available under this Framework Agreement the Department has instructed the Provider to carry out under the terms of a Call-Off Contract by means of a valid Order placed in accordance with the Ordering Procedures;



Participant	Means a person who has been offered a place on an ITT Programme by and ITT Provider, conditional on their completion of a SKE Course;
ITT Programme	means an Initial Teacher Training programme
ITT Provider	means a Department for Education accredited Initial Teacher Training Provider;
Protective Measures	means 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 an evaluating the effectiveness of the such measures adopted by it;
Qualifying Change in Law	<p>means: -</p> <p>(a) any Change in Law which specifically refers to the provision of a service the same as or like the Services; or</p> <p>(b) a Change in Law the terms of which apply expressly to the Project and to similar projects and/or the Provider and not to other persons;</p> <p>which was not foreseeable at the Commencement Date;</p>
Records	means such full and accurate records as are required to be kept by the Provider to satisfy the requirements of Clause 23 (Audit), including the Services supplied and all Charges ;
Recruitment Plan	means an annual recruitment and delivery plan to set out Providers proposed subjects offered and forecast recruitment levels;
Regulatory Bodies	means 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 Framework Agreement or any other affairs of the Department and "Regulatory Body" shall be construed accordingly;
Requests for Information	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
SER	means Service Eligibility Request;
Services	means the services specified in Schedule 3 (the Specification) that the Provider shall make available to the



	Department in accordance with this Framework Agreement;
SKE Academic Year	means a 12 month period commencing on 1 October and ending on 30 September;
SKE Course	means a subject knowledge enhancement course as described in Schedule 1 Part 1 (Specification);
SKE Programme	means the Department's overall programme of subject knowledge enhancement for prospective trainee teachers;
SKE Subject	means a SKE Course which forms part of the SKE Programme in a given SKE Academic Year, as notified in advance by the Department to the Provider;
SME	Means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and any subsequent revisions;
Specification	means the specification of Services being offered to the Department by the Provider under this Framework Agreement as included in this Framework Agreement at Schedule 3;
Spend Controls	means any controls applied to manage the availability of SKE Funding for the SKE Programme, including but not limited changes and/or reduction to the number of subjects in which SKE Course will run and /or controls in relation to geographical delivery of SKE Courses;
Sub-Contractor	means any contractor selected, appointed and managed by the Provider. The terms "Sub-Contract" and "Sub-Contracting" shall be similarly construed;
Termination Date	shall mean the date on which the Project Agreement terminates before the end of its intended contract period, in accordance with the terms of the Project Agreement.
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and or any other regulations enacted for the purpose of implementing the EC Acquired Rights Directive 77/187 into English law;
Working Day	means any day other than a Saturday or Sunday or public holiday in England and Wales;

## **SCHEDULE 2 – MODEL CALL-OFF CONTRACT**



Document 6 -  
Call-off Contract v1.

## **SCHEDULE 3 – SPECIFICATION**



Document 2 -  
Service Specification

## **SCHEDULE 4 – CALL-OFF PROCEDURES**

### **Part A: Ordering Procedures under the First Call-Off Contract**

#### **1. INTRODUCTION**

- 1.1. The Parties will enter into the First-Call Off Contract pursuant to clause 4.1.
- 1.2. This Schedule 4 (Part A) specifies the procedures that the Department will follow to place an Order with the Provider and other Providers appointed to the Framework Agreement under the First Call-Off Contract.
- 1.3. The Department is entitled at any time during the Contract Period to order Services. Such Services shall be provided by the Provider as Ordered Services in accordance with the provisions of a Call-Off Contract.
- 1.4. Prior to any Order being issued the Department and the Provider shall undertake their requisite obligations as set out in paragraph 3.
- 1.5. In the event that the Department so decides, an Order shall be made by the Provider accepting an Order served by the Department in accordance with these Ordering Procedures and Clause 4 (Ordering Procedures) of this Framework Agreement.

#### **2. PROCEDURES**

- 2.1. Ordering Procedure
  - 2.1.1. The Department may only use the Ordering Procedure when its requirements can be achieved within the terms of this Framework Agreement.
  - 2.1.2. Choice of Provider rests with Participants and Orders by made the Department through the Framework will reflect those preferences.
  - 2.1.3. The Provider will confirm to the Department, through the submission of SERs, as set out in paragraph 3 below, the Participants that have selected the Provider to deliver their SKE Course requirement.
  - 2.1.4. The Department shall consider the submitted SERs, as set out in paragraph 3 below and where satisfied as to their content shall confirm the same to the Provider. That confirmation shall constitute the Order in accordance with paragraph 3 of this Schedule 4 and on receipt of the confirmation the Provider shall be obliged to deliver the Services covered by the SER in accordance with the terms of the Call-Off Contract.

#### **3. ORDERS**

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

Department will notify the Provider of any such rejections and the reasons for them.

- 3.3. Where Purchase Order is in place, and the SER(s) submitted are valid and accepted by the Department, the Department will confirm to the Provider that the SER is accepted and that confirmation shall constitute the Order for the Service.
- 3.4. The Provider should submit the SER form prior to the date on which the Participant commences their SKE Course. In exceptional circumstances where this is not possible the Provider must submit the SER Form the next month after the SKE Course start date. Failure to record the start date of the SKE Course in the SER form will result in the form being rejected by the Department and no Order being made at that time.
- 3.5. Commencement of delivery of a SKE Course to a Participant prior to submission to and acceptance of the SER Form by the Department is wholly at the Provider's risk.
- 3.6. The Provider must submit SERs in accordance with the Department's prescribed timetable as set out in the Call-Off Contract, Schedule 2 Part 1 (Price).

## **Part B: Ordering Procedures for any subsequent Call-Off Contract**

### **The Department's Obligations**

- 3.1 In order to award a Further Call Off Contract either by direct award or by undertaking a Further Competition Procedure.
- 3.2 The Department may enter into a Further Call-Off Contract by Direct Award in order to facilitate Participant selection of Provider and may thereafter Order Services in accordance with the provisions of Part A of this Schedule.
- 3.3 The Department may determine to run a further competition procedure where it has a requirement for delivery of the Services other than through Participant selection of Provider as set out in Part A of this Schedule. Such requirements may include but are not limited to the provisions of the Services with a defined geographical area of the country or the provision of Services in specified subject areas.
- 3.4 Where the Department determine to run a further competition it shall:
  - 3.1.1. develop a Statement of Service Requirements and identify the Framework Providers capable of supplying the Services;
  - 3.1.2. amend or refine the Model Call Off Contract to reflect its Service Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
  - 3.1.3. invite tenders by conducting a Further Competition Procedure for its Service Requirements in accordance with the Regulations and Guidance and in particular:
    - (a) the Department shall:
      - (i) invite the Framework Providers identified in accordance with paragraph 3.1.1 to submit a tender in writing for each proposed Call Off Contract to be awarded by giving written notice by email to the relevant Provider Representative of each Provider;
      - (ii) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the proposed Call Off Contract and the time needed to submit tenders; and
      - (iii) keep each tender confidential until the time limit set out for the return of tenders has expired.
  - 3.1.4. apply the Further Competition Award Criteria to the Framework Providers' compliant tenders submitted through the Further Competition Procedure as the basis of its decision to award a Call Off Contract for its Services Requirements;
  - 3.1.5. on the basis set out above, award its Call Off Contract to the successful Framework Provider in accordance with paragraph 7 which Call Off Contract shall:
    - (a) state the Service Requirements;
    - (b) state the tender submitted by the successful Provider;
    - (c) state the charges payable for the Service Requirements in accordance with the tender submitted by the successful Provider; and
    - (d) incorporate the Model Call-Off Contract terms (as may be amended or refined by the Department in accordance with paragraph 3.1.2 above) applicable to the Services,

- 3.1.6. provide unsuccessful Providers with written feedback in relation to the reasons why their tenders were unsuccessful.

### **The Provider's Obligations**

- 3.5 The Provider shall in writing, by the time and date specified by the Department following an invitation to tender pursuant to paragraph 3.1.3 above, provide the Department with either:
- 3.2.1 a statement to the effect that it does not wish to tender in relation to the relevant Service Requirements; or
  - 3.2.2 the full details of its tender made in respect of the relevant Statement of Service Requirements. In the event that the Provider such a tender, it should include, as a minimum:
    - (a) an email response subject line to comprise unique reference number and Provider name, so as to clearly identify the Provider;
    - (b) a brief summary, in the email (followed by a confirmation letter), stating that the Provider is bidding for the Statement of Service Requirements;
    - (c) a proposal covering the Service Requirements; and
  - 3.2.3 The Provider shall ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall be based on the Charges. and take into account any discount to which the Department may be entitled as set out in Framework Schedule 3 (Framework Prices and Charging Structure).
  - 3.2.4 The Provider agrees that:
    - (a) all tenders submitted by the Provider in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall remain open for acceptance by the Department for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Department in accordance with the Call Off Procedure); and
    - (b) all tenders submitted by the Provider are made and will be made in good faith and that the Provider has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Provider certifies that it has not and undertakes that it will not:
      - (i) communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and
      - (ii) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.
  - 3.2.5 The Department shall use the following criteria when awarding a Call-off Contract under the Further Competition Procedure:

Criteria	Percentage Weightings (to be set by the Department conducting the further competition)
----------	---

Quality	100%
---------	------

3.2.6 The Department reserves the right to apply an alternative criteria when awarding a Call-off Contract subject to appropriate notice

#### **4. NO AWARD**

- 4.1 Notwithstanding the fact that the Department has followed a procedure as set out above in paragraph 2 or 3 (as applicable), the Department shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this Framework Agreement shall oblige the Department to award any Call Off Contract.

#### **5. RESPONSIBILITY FOR AWARDS**

- 5.1 Not used.

#### **6. CALL OFF AWARD PROCEDURE**

- 6.1 Subject to paragraphs 1 to 6 above, the Department may award a Call Off Contract with the Provider by sending (including electronically) a signed Call Off Contract substantially in the form (as may be amended or refined by the Department in accordance with paragraph 3.1.2 above) of the Model Call-Off Contract. The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Contract) which is not as described in this paragraph 7 shall not constitute a Call Off Contract under this Framework Agreement.
- 6.2 On receipt of a further Call-Off Contract as described in paragraph 7.1 from the Department the Provider shall accept the Call Off Contract by promptly signing and returning (including by electronic means) a copy of the Call-Off Contract to the Department.
- 6.3 On receipt of the signed Call-Off Contract from the Provider, a Call Off Contract shall be formed.



## ANNEX 1: SER FORM



2021 SKE funding  
claim form - June 21

## **SCHEDULE 5 – CONTRACT CHANGE PROCEDURE**

### **1. INTRODUCTION**

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

### **2. PRINCIPLES**

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

### **3. PROCEDURE**

- 3.1. Should either Party wish to amend this Framework Agreement, that Party's Framework 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 Framework 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 this Framework Agreement (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 Framework Agreement.
- 3.3. Where agreement is reached in accordance with paragraph 3.2.2, the Party submitting the draft CCN shall prepare the final CCN for execution by both Parties. The final CCN, the content of which has been agreed between the Parties in accordance with paragraph 3.2.2 of this Schedule 5, shall be uniquely identified by a sequential number allocated by the Department.
- 3.4. Two (2) copies of each CCN shall be signed by the Provider and submitted to the Department not less than ten (10) Working Days prior to the effective date agreed in accordance with paragraph 3.2.2 of this Schedule 5.

- 3.5. Subject to the agreement reached in accordance with paragraph 3.2.2 of this Schedule 5 remaining valid, the Department shall sign both copies of the approved CCN within five (5) Working Days of receipt by the Department. Following signature by the Department, one (1) copy of the signed CCN shall be returned to the Provider by the Department.
- 3.6. A CCN signed by both Parties shall constitute the basis of a Deed of Variation for the purposes of amending this Framework Agreement pursuant to Clause 5.1 of this Framework Agreement.

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

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

Jaggaer Reference No .....

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

Title: .....

Originator: .....for the [the Department / Provider]

Date change first proposed: .....

Number of pages attached: .....

WHEREAS the Provider and the Department entered into a Framework Agreement for the provision of Subject Knowledge Enhancement Services dated [date] and now wish to amend that Framework Agreement;

**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 Framework Agreement**

[Party proposing change to complete]

**IT IS AGREED** as follows:

1. With effect from [date] it is proposed that the Framework Agreement shall be amended as set out below:

[Details of the amendments to the Framework Agreement 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 Framework Agreement 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 5.1 of this Framework Agreement.

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

**By** .....

**Name** .....

**Title** .....

**Date** .....

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

**By** .....

**Name** .....

**Title** .....

**Date** .....

## SCHEDULE 6 – FRAMEWORK AGREEMENT PROVIDERS

The following Contractors have been awarded a Framework Agreement to deliver Subject Knowledge Enhancement services:

Providers
Liverpool Hope University
Tes Institute
Teach First
The Polesworth School
Archway Learning Trust
St Mary's University
Nottingham Trent University
University of Bedfordshire
University of Chichester
Edge Hill University
e-Qualitas
Manchester Metropolitan University
Mersey Boroughs ITT Partnership
Lydiate Learning Trust
University of Birmingham
University of Brighton
BCS, The Chartered Institute for IT
Birmingham City University
North East Learning Trust
University of Sussex
Canterbury Christ Church University
Delta Academies Trust

Carmel College
Leicestershire Secondary SCITT
University of Sunderland
University of Worcester
Priory Federation of Academies
University of Chester
Yorkshire and Humber Teacher Training
University of Portsmouth
Arden Teaching School
GITEP SCITT
GORSE SCITT
Plymouth Marjon
Newman University
The Spanish Course
Barr Beacon SCITT
Bradford College
University of East London
University of Reading
University of Wolverhampton

## SCHEDULE 7 – PRICING

### 1. Charges

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

**Table 1: Unit values**

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

**Table 2: Unit Values x SKE Course length**

Course Length	Payment @ Band 1	Payment @ Band 2	Payment @ Band 3	Payment @ Band 4	Payment @ Band 5
8 weeks	£1,600.00	£1,440.00	£1,280.00	£1,120.00	£960.00
12 weeks	£2,400.00	£2,160.00	£1,920.00	£1,680.00	£1,440.00
16 weeks	£3,200.00	£2,880.00	£2,560.00	£2,240.00	£1,920.00



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

- 1.9. The above Unit values and course costs are based on full time course delivery and do not include the cost of the bursary. Pricing for part time courses will be calculated using the same Unit values and bandings but at a pro-rata rate, such that the Charges for an 8 week SKE Course at Band 1 delivered over 16 weeks would be £100 per week.

## **2. Gain Share**

- 2.1. The Unit values set out in Tables 1 and 2 above may be changed in relation to the delivery of certain Services as a consequence of the implementation of a Gain Share mechanism as set out in the Call-Off Contract, Schedule 2.]

## **3. Bursary Payments**

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

### **Charges to Participants and ITT Providers.**

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

## **4. Payment Procedure**

- 4.1. The Payment procedure is as set out in the Call-Off Contract.

## **ANNEX 1 – BURSARY PAYMENT GOVERNANCE**

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

## SCHEDULE 8 – FINANCIAL DISTRESS

### 1. DEFINITIONS

In this Schedule, the following definitions shall apply:

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

### 2. CREDIT RATING AND DUTY TO NOTIFY

- 2.1 The Provider warrants and represents to the Department for the benefit of the Department that as at the Commencement Date the long-term credit ratings issued for the Provider by each of the Rating Agencies are as set out in Annex 3.
- 2.2 The Provider shall promptly notify (or shall procure that its auditors promptly notify) the Department in writing if there is any downgrade in the credit rating issued by any Rating Agency for the Provider (and in any event within 5 Working Days of the occurrence of the downgrade).
- 2.3 If there is any downgrade credit rating issued by any Rating Agency for the Provider, the Provider shall ensure that the Provider’s auditors thereafter provide the Department within 10 Working Days of the end of each Year and within 10 Working Days of written request by the Department (such requests not to exceed 4 in any Year) with written calculations of the quick ratio for the Provider as at the end of each Year or such other date as may be requested by the Department. For these purposes, the “quick ratio” on any date means:

where:

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

- 2.4 The Provider shall:

- (a) regularly monitor the credit ratings of the Provider with the Rating Agencies;

and

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

2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 3.1(a), the credit rating of the Provider, shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Provider at or below the applicable Credit Rating Level.

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

3.1 In the event of:

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

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 Contract;

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 Provider), the Provider shall have the obligations and the Department shall have the rights and remedies as set out in Paragraphs 3.2 to 3.6.

3.2 The Provider 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 Provider in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and
  - (b) where the Department reasonably believes (considering the discussions and any representations made under Paragraph 3.2(a) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:
    - (i) submit to the Department for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Department may permit and notify to the Provider in writing); and
  - (c) provide such financial information relating to the Provider as the Department may reasonably require.
- 3.3 The Department shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Department does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Provider of its reasons and the Provider shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Department within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by Department or referred to the Dispute Resolution Procedure under Paragraph 3.5.
- 3.4 If the Department considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Provider's obligations in accordance with the Contract, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 3.5 Following approval of the Financial Distress Service Continuity Plan by the Department, the Provider shall:
  - (a) on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Contract;
  - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the Department for its approval, and the provisions of Paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
  - (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.6 Where the Provider reasonably believes that the relevant Financial Distress Event under Paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Department and the Parties may agree that the Provider shall be relieved of its obligations under Paragraph 3.6.

#### **4. TERMINATION RIGHTS**

4.1 The Department shall be entitled to terminate this Contract if

- (a) the Provider fails to notify the Department of a Financial Distress Event in accordance with Paragraph 2.4(b).
- (b) the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or
- (c) the Provider fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6(c)

## **Annex 1: Rating Agencies**

### **1.1 Graydon Insights**

## **Annex 2: Credit Rating Levels**

- 2 Credit Rating level - Graydon Percentage
  - Graydon Insight – <REDACTED>



### Annex 3: Credit Ratings and Credit Threshold

Entity	Credit rating - Graydon Percentage	Credit Rating Threshold
Provider	<REDACTED>	10% or below

## **SCHEDULE 9 – PARENT COMPANY GUARANTEE**

Not used.

## SCHEDULE 10 – FINANCIAL REPORTS AND AUDIT RIGHTS

### PART A

#### Financial Transparency Objectives and Open Book Data

#### 1 FINANCIAL TRANSPARENCY OBJECTIVES

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

##### **Understanding the Charges**

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

##### **Agreeing the impact of Change**

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

##### **Continuous improvement**

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

#### 2. **OPEN BOOK DATA**

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

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

## **PART B**

### **Audit Rights**

#### **1 AUDIT RIGHTS**

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

## **SCHEDULE 11 – Provider Inspection**

### **Monitoring Visits**

- 1.1. Where the Department is made aware that the provider has been subject to an adverse monitoring visit by a Regulatory Body, including OFSTED for other in scope provisions, the Department may, in its absolute discretion take the following actions:
  - 1.1.1. suspend the Provider from the Framework Agreement until further notice;
  - 1.1.2. require the Provider to inform all its existing Subcontractors and Participants, as relevant, about the outcome of the visit.
  - 1.1.3. in relation to any Call-Off Contracts require the Provider to enter into a subcontracting arrangement with another Provider in order to ensure that there is minimal disruption to the SKE Courses delivered to the Provider's current Participants;
  - 1.1.4. terminate this Framework Agreement in accordance with Clause 7 (Termination) where Participants may be at immediate risk on the grounds of safeguarding issues and / or the quality of leadership and / or training provision is such that one or more Participants has no reasonable prospect of achieving his or her training objective.
- 1.2. Where the Department is made aware that any Subcontractor to the Provider has been subject to an adverse monitoring visit, the Provider shall procure that the Subcontractor suspends delivery of SKE Courses to new Participants until further notice.

### **Provider Inspection**

- 1.3. OFSTED or any other regulatory authority may, at any time during the Term, undertake an inspection of the Provider (where in scope). The Department will consider the outcome of any such inspection as follows:

#### **Inadequate in Part**

- 1.3.1. Where OFSTED or any other regulatory authority has assessed the Services (non-SKE provisions) to be inadequate in part, the Department may, at its absolute discretion take one or more of the following actions:
  - 1.3.1.1. require the Provider to accept and comply with additional contractual obligations relating to the improvement of the Services assessed as inadequate; and / or
  - 1.3.1.2. suspend the Provider from the Framework Agreement and / or the delivery of Services to Participants in the Service area that has been assessed as inadequate; and / or
  - 1.3.1.3. reduce, suspend or recover Charges from the Provider in respect of that part of the Services that has been assessed as inadequate; and / or
  - 1.3.1.4. terminate in the Framework Agreement in accordance with Clause 7 (Termination).

#### **Inadequate Overall**

- 1.3.2. Where OFSTED or any other regulatory authority has assessed Services delivered by the Provider as inadequate overall, the Department may, at its absolute discretion take one or more of the following actions:

- 1.3.2.1. require the Provider to accept and comply with additional conditions relating to the improvement of the Services; and / or
  - 1.3.2.2. suspend the Provider from the Framework Agreement and / or the delivery of Services to the current Participants; and / or
  - 1.3.2.3. give consideration to the assessment of inadequate when considering the Provider's Recruitment Plan and allocating a purchase order number to the same; and / or
  - 1.3.2.4. reduce, suspend or recover payment to the Provider; and / or
  - 1.3.2.5. terminate this Framework Agreement in accordance with Clause 7 (Termination).
- 1.3.3. The failure of the Provider, as assessed by the Department, to comply with any requirements of paragraphs 1.3.2.1 and 1.3.2.2 within such time as the Department may deem reasonable may lead to the Department taking such actions as it deems appropriate which may include, but is not limited to, terminating this Framework Agreement in accordance with Clause 7 (Termination).
- 1.3.4. The Department will take action based on OFSTED's or any other regulatory authorities provisional and confirmed outcomes as set out in Clauses 1.3.1 and 1.3.2 above. Where the Department is made aware that the Provider has made a complaint about the outcome of any monitoring assessment, the Department will continue to consider what action it needs to take under this Framework Agreement but will be mindful of the implications arising from the outcome of a complaint. The Department will review any decisions made at such time when the outcome of any complaint is made known.