

RD10000162 Initial Training for Educational Psychologists Contract

THIS Contract is made on DAY of 2015

Between:

- (1) The Secretary of State for Education operating from Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT, acting through the National College for Teaching and Leadership ("NCTL"); and
- (2) The University College London, 26 Bedford Way London WC1H 0AP registered office address (the "Provider").

It is agreed that:

1. The Secretary of State for Education operating from Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT will be acting through its executive agency, NCTL.
2. This form of agreement, together with the attached Schedules and appendices are the documents which collectively form the "Contract".
3. In the event of any conflict between the provisions of the clauses of this Contract, the provisions of the Schedules or appendices the following order of precedence shall apply:
 - (a) the clauses of this Contract;
 - (b) Schedule 2;
 - (c) the requirement set out in Schedule 1;
 - (d) Schedules 3 to 13;
 - (e) any appendix to the relevant Schedule;
 - (f) the invitation to tender (appendix 10); and
 - (g) the Provider's Solution set out in Schedule 13.

This document has been executed on the date stated at the beginning of this Contract.

SIGNED by the PROVIDER acting by

Authorised Signatory



PHIL HARDING
FINANCE DIRECTOR

In the presence of ELIZABETH MOONEY

Witness signature 

Occupation DIVISIONAL MANAGER

Address 6th FLOOR, 1-19 TORRINGTON PLACE, LONDON WC1E 7HB

Date 16/9/15

SIGNED by NCTL acting by



Position Deputy Director, NCTL

in the presence of 

Witness signature 

Occupation SENIOR MANAGER, NCTL

Address 35 HUNT CLOVE, NOTTINGHAM, NG12 2EQ

Date 21/9/15

Schedule 1

The Specification

This Schedule shall be finalised at contract clarification/fine tuning stage and will be comprised of the Specification issued with the ITT.

Contract Term

This contract will be for an initial period (Initial Term) of 51 months from July 2015 to 30 September 2019 (to include an initial set up phase between July and September 2015 to cover the following core elements,

- delivery of 2016/18 recruitment commencing September 2015 and concluding June 2016,
- delivery of existing year 2 programme commencing August 2016 and concluding July 2017,
- delivery of 2016/18 programme commencing August 2016 and concluding July 2018,
- delivery of 2017/19 recruitment commencing September 2016 and concluding June 2017,
- delivery of 2017/19 programme commencing August 2017 and concluding July 2019
- an exit period of up to 8 weeks at the cohort end. (Up to September 2019)

NCTL may also require the recruitment and delivery of an additional cohort ("2018/ 2020 cohort") covering the period September 2017 to August 2020 as described in the statement of requirement. Recruitment for the cohort would commence in September 2017 with delivery to participants starting in September 2018 and conclude in July 2020. Where delivery of the 2018/20 cohort is required, NCTL will give the Provider 6 Months' notice and the Contract will be extended from expiry to the initial Term for a further period of up to a maximum of 12 Months to accommodate the delivery of the 2018/20 cohort.

Any additional cohort will be subject to the continued support and funding by government and the satisfactory delivery of the programme and its outcomes.

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confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure,
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

"Consortium Member"

each member of the consortium (if any) established by the Provider in accordance with **clause 9.1**, as may be amended pursuant to the provisions of **clause 9**

"Contract"

this written agreement between NCTL and the Provider, together with the attached Schedules and appendices

"Contracting Authority"

any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015

"NCTL"

"Data Handling Schedule"

the applicable standard Data Handling Schedule of NCTL as referred to in **clause 10**, as updated by NCTL from time to time, the current version of which is available at such other as NCTL shall nominate for this purpose from time to time, and the applicable version of which as at the Effective Date is set out in **Schedule 10**

"Deed of Adherence"

a deed of adherence under which each Consortium Member shall covenant to the Provider and NCTL to adhere, so far as is applicable, to the obligations of the Provider under this Contract in either the form set out in **Schedule 13** or in any other form approved by NCTL in writing

"Designated Information Systems"

any information systems notified to the Provider from time to time by NCTL which NCTL requires the Provider to use in connection with the Services

any dispute or difference between the Parties in respect

"Force Majeure"

any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take reasonable preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

(a) any industrial action occurring within the Provider's or any of its Sub-Provider's organisation, or otherwise involving the Provider Personnel; or

(b) the failure by any Sub-Provider of the Provider to perform its obligations under any sub-contract

"Good Industry Practice"

standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances

"Good Industry Standard"

the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timelines as would be expected from a leading company within the relevant industry or business sector.

"HCPC"

The Healthcare and Professions Council

"Implementation Plan"

the plan and time schedule for the completion of the obligations of the Provider under this Contract as specified **Schedule 5** as the same may be replaced by any subsequent more detailed plan and time schedule as the Parties may agree in writing from time to time

"Initial Term"

the period from the Effective Date to 30 September 2019

"Intellectual Property Rights"

patents, inventions, trade-marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade and / or business names, rights in confidential information and know how, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

"IP Materials"

any materials used or developed for the purposes of this Contract including any programme materials, guidance, papers and research data, results, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs

Principle;

- iii. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

- (b) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion

"Participants"

the individual trainees taking part in the Programme

"Performance Monitoring Report"

the monthly report prepared by the Provider in accordance with **Schedule 4**

"Performance Review Meeting"

the regular meeting between the Provider and NCTL to manage and review the Provider's performance under the Contract, as further described in paragraph 1.8 of **Schedule 4**

"Programmes"

NCTL programmes identified and described in more detail in the Requirement

"Prohibited Act"

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i. induce that person to perform improperly a relevant function or activity; or
 - ii. reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
 - i. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
 - ii. under legislation or common law concerning fraudulent acts; or

"Relevant Conviction"	a conviction for an offence involving violence or dishonesty, of a sexual nature or against minors, or for any other offence that is relevant to the nature of the Services
"Requirement"	the description of Services and the manner in which the same are to be provided, set out in Schedule 1
"Returning Employees"	those persons agreed by the Parties to be employed by the Provider (and/or any sub-contractor) wholly or mainly in the supply of the Services immediately before the end of the Contract
"Services"	<p>the specific services described in the Requirement together with such of the following as may be required by NCTL from time to time:</p> <ul style="list-style-type: none">a) the delivery and provision of the Programmes; andb) the development of training programmes
"Services Commencement Date"	14 September 2015
"Service Failure"	any defect in or failure of all or any part of the Services which results in a failure to provide the affected Services in accordance with the Key Performance Indicators
"Service Failure Log"	the hard copy and electronic version of the log created and maintained by the Provider as part of the Services in accordance with the requirements of Schedule 4
"Service Period"	<p>shall have the following meaning:</p> <ul style="list-style-type: none">(i) the first Service Period of this Contract shall begin on the Services Commencement Date and shall expire at the end of the calendar month in which the Service Commencement Date falls; and(ii) after the first Service Period of this Contract a Service Period shall be a calendar month during this Contract save that the final Service Period of this Contract shall commence on the first day of the calendar month in which the Contract expires or terminates and shall end on the expiry or termination of the Contract
"Service Credits"	<p>the service credits specified in Schedule 4 which shall be payable to the NCTL by the Provider in the event that the Service Levels are not met in respect of Services</p> <p>the levels of service defined in Schedule 4</p>

2 THE SERVICES

Programme delivery

- 2.1 The Provider shall provide the Services in accordance with the Requirement and undertake and be responsible for all obligations of the Provider in respect of the Services identified in the Requirement, provided that the Provider shall not in any way be responsible or liable under this Contract for a failure to deliver the Services in accordance with its obligations under this Contract in so far as such failure arises as a result of a failure of NCTL to comply with its obligations under this Contract.
- 2.2 The Provider shall be responsible for the provision of the Programmes in the Area. The NCTL reserves the right at all times to appoint other providers for the Programmes in the Area.

Other services and obligations

- 2.3 Additionally, the NCTL may from time to time request the provision of discrete elements of the Services by notice in writing to the Provider which the Provider shall then provide in accordance with the terms of this Contract. The NCTL's request shall specify its required time for performance, if relevant.
- 2.4 The Provider shall in performing its obligations under this Contract:
- 2.4.1 conform to the requirements of the Requirement and the Provider's Solution (to the extent such of the Provider's Solution remains relevant), or as otherwise agreed in writing between the Parties.
 - 2.4.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the NCTL (including in connection with the provision of leadership development and courses using resources and materials and following formats and guidelines specified by the NCTL from time to time);
 - 2.4.3 comply with Good Industry Practice;
 - 2.4.4 ensure that the Services are provided by competent and appropriately trained personnel approved in writing by the NCTL;
 - 2.4.5 comply with the Quality Standards;
 - 2.4.6 comply with the Key Performance Indicators;
 - 2.4.7 comply with the Implementation Plan;
 - 2.4.8 make use of any Designated Information Systems in accordance with and subject to any licence terms notified in writing to the Provider by the NCTL from time to time (provided that the NCTL shall provide the Provider with at least 14 days' written notice of any such licence terms prior to being required to comply with the same) and in accordance with the Requirement, but only for the purposes of performance of the Services. Further, in connection with its use of any Designated Information Systems the Provider shall keep secure and not disclose to any third party the log-in, password and any other security measures provided to it in relation to its use of any Designated Information Systems and shall, without prejudice to the generality of this clause 2.4.8 and the provisions of **Schedule 10**, comply with all information security policies and guidelines from time to time notified to it by the NCTL;
 - 2.4.9 in so far as is reasonably practicable, comply with any policies and procedures adopted by the NCTL from time to time within 14 days of the same being brought to the attention of the Provider in writing by the NCTL; and
 - 2.4.10 comply with applicable law and any applicable codes of practice or governmental regulation. Without prejudice to the generality of the foregoing, the Provider shall:

- 3.4 The NCTL shall not be responsible for paying the Provider for the delivery of the Programmes other than payment of the Charges as specified in this **clause 3** and **Schedule 3**.
- 3.5 The Provider shall be entitled to claim from the Recipient the Recipient Charges for services provided to the Recipient under the Contract. The Provider shall not claim any other costs or expenditure from the Recipient other than the costs and expenditure set out in the Contract. The Provider is solely responsible for collecting the Recipient Charges and the NCTL shall not be responsible for reimbursing the Provider for any loss suffered as a result of any non-payment of the Recipient Charges. The Charges are inclusive of Value Added Tax ("VAT") and all other taxes, duties and levies, costs and expenses of whatever nature the Provider incurs in providing the Services to be provided by the Provider, and performing all other obligations of the Provider, under this Contract (unless expressly stated otherwise in this Contract). The Provider should notify the NCTL of any direct VAT charges for the delivery of this Contract. The Provider shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 3.6 Payment of the Charges by the NCTL shall be without prejudice to any rights the NCTL may have by reason of any Services, or any part thereof, failing to comply with any provision of this Contract and any breach by the Provider of this Contract shall not be deemed to be accepted or waived by the NCTL by reason of such payment.
- 3.7 The NCTL reserves the right to deduct from or offset against any monies due or becoming due to the Provider under this Contract (including the Charges) any monies due from the Provider under this Contract.
- 3.8 If any sum properly due and payable under this Contract is not paid when due then the Party entitled to receive such sum shall be entitled to charge interest on that sum from the due date until payment is made in full, both before and after any judgment, subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank plc. The Parties agree that this **clause 3.8** is a substantial remedy for late payment of any sum payable under this Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998. The Provider shall not, in the event of late payment or for any other reason (except to the extent set out in **clause 24**), be entitled to suspend performance of the Services or any of its other obligations under this Contract.

4 AUDIT AND MONITORING

- 4.1 The NCTL (or its authorised representatives) shall be permitted to visit any premises of the Provider, any Consortium Member or any other premises at which the Services (or any part of them) are being or are to be performed to ascertain that the Provider is conforming in all respects with its obligations arising under or in connection with this Contract and otherwise to monitor and quality assure the provision of the Services, subject to the NCTL giving reasonable notice to the Provider and any visit taking place during normal working hours, or such other hours during which any of the Services are being provided. During such visits, the NCTL shall be entitled to inspect and take copies of such of the records of the Provider and any Consortium Member as relate to their performance of obligations arising under or in connection with this Contract. Where the NCTL reasonably considers that any provision of this Contract is at risk of not being complied with it may, notwithstanding and without prejudice to any other right or remedy that it may have under this Contract or otherwise:
- 4.1.1 require the Provider to produce a plan of remedial action in order to remedy or remove such risk, which shall be subject to the approval of the NCTL (not to be unreasonably withheld) and which, once approved, the Provider shall implement; and
- 4.1.2 monitor, supervise, direct and/or guide the Provider's provision of the Services until the NCTL reasonably considers that any such risk has been remedied or

7 NCTL'S OBLIGATIONS

7.1 In particular and in furtherance of the purposes of this Contract the NCTL shall:

- 7.1.1 comply with its responsibilities set out in **Schedule 7**
- 7.1.2 exchange with the Provider research findings, publications, academic teaching resources and other written materials in its possession which relate specifically to the Services;
- 7.1.3 provide a Project Manager who will be the point of contact between the NCTL and the Provider during the term of this Contract; and
- 7.1.4 work with the Provider in a "spirit of collaboration" in furtherance of the objectives of this Contract.

8 INTELLECTUAL PROPERTY

8.1 All Intellectual Property Rights in IP Materials:

- 8.1.1 furnished to or made available to the Provider by or on behalf of the NCTL (the "NCTL IP Materials") shall remain the property of the NCTL; and
- 8.1.2 prepared by or for the Provider on behalf of the NCTL in connection with the Contract the "Service Specific IP Materials" and, together with the NCTL IP Materials, the "Programme IP Materials"), shall belong to the NCTL;.

8.2 Without prejudice to **clause 8.17**, the Provider shall not, and shall ensure that the Provider Personnel shall not, (except when necessary for the performance of this Contract) without prior written approval of the NCTL, use or disclose the Programme IP Materials or any Intellectual Property Rights in the Programme IP Materials for any purpose.

8.3 The Provider hereby grants NCTL:

- 8.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all Intellectual Property Rights in the Service Specific IP Materials and any Intellectual Property Rights arising as a result of the provision of the Services; and
- 8.3.2 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use any IP Materials vested in or licensed to the provider on the Effective Date including any modifications to or derivative versions of any such IP Materials which NCTL reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services.

8.4 The Provider shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright produced by or in connection with this Contract or the performance of this Contract.

8.5 The Provider shall use its reasonable efforts to procure that the third party owner of any Intellectual Property Rights that are or which may be needed to use and receive the full benefit of the Programme IP Materials and NCTL Data grants to the NCTL a non-exclusive licence or, if itself a licensee of those rights and is able to do so under the terms of its licence, shall grant to the NCTL an authorised sub-licence, to use, reproduce, modify, develop and maintain the Service Specific IP Materials and the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the NCTL to sub-license, transfer, novate or assign (in whole or in part) to other Contracting Authorities, the New Service Provider or to any other third party supplying services to the NCTL. The Provider shall in any event notify the NCTL of any third party Intellectual Property Rights to be used in connection with this Contract prior to the use of the same in connection with this Contract or the creation or development of the Service Specific IP Materials.

expense and subject to the consent of the NCTL (not to be unreasonably withheld or delayed), use reasonable endeavours to:

- 8.12.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 8 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or
- 8.12.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and Services, which are the subject of the alleged infringement, on terms which are acceptable to the NCTL, and in the event that the Provider is unable to comply with **clauses 8.12.1 and 8.12.2** within 20 Business Days of receipt of the Provider's notification the NCTL may terminate this Contract with immediate effect by notice in writing.
- 8.13 The Provider grants to the NCTL a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Provider owned or developed prior to the Effective Date or otherwise not in connection with this Contract (the "Provider IP") and which the NCTL reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided and the use and further development of the IP Materials.
- 8.14 Save as granted in this Contract, the NCTL will not acquire any right, title or interest in the Provider IP.
- 8.15 The NCTL agrees to comply with the reasonable instructions of the Provider in respect of the way in which it uses the IP Materials licensed under **clause 8.13**.
- 8.16 the event that the Provider is not able to grant to the NCTL a licence to use any Provider IP for any reason, including due to any Intellectual Property Rights that a third party may have in such Provider IP, the Provider shall use its reasonable efforts to:
 - 8.16.1 procure that the third party owner of any Intellectual Property Rights that are or that may be used to perform this Contract grants to the NCTL a licence on the terms set out in clause 8.5; or
 - 8.16.2 if the Provider is itself a licensee of those rights and is able to do so under the terms of its licence, grant to the NCTL a sub-licence on the terms set out in clause 8.5.
- 8.17 The Provider shall not knowingly do or permit to be done, nor omit to do in connection with its use of Intellectual Property Rights which are or are to become owned by the NCTL (the "NCTL IP") any act or thing which:
 - 8.17.1 would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant Trade Mark Registry; or
 - 8.17.2 would or might prejudice the right or title of the NCTL to any of the NCTL IP.
- 8.18 The Provider shall comply with the NCTL's Branding Guidelines, and shall not use any other branding, including its own, other than as set out in the NCTL's Branding Guidelines or as otherwise agreed with the NCTL.
- 8.19 When using NCTL Trade Marks the Provider shall observe all reasonable directions given by the NCTL from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Provider may not:
 - 8.19.1 adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any NCTL Trade

fails to remedy such breach within 30 days of receipt of written notice giving particulars of such breach and requiring it to be remedied;

12.3.2 being a company, summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, has a receiver, manager or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation previously approved in writing by the Party serving notice), is subject to a petition presented to any court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation previously approved in writing by the Party serving notice), is subject to a petition presented to any court for its administration, has a provisional liquidator appointed, has a proposal made for a compromise or arrangement under Part 26 Companies Act 2006 or is the subject of a notice to strike off the register at Companies House or has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person;

12.3.3 being an individual, partnership or firm has entered into any composition or arrangement with its creditors, has a bankruptcy order made against it, has been made subject to an application for an interim order under section 253 Insolvency Act 1986 or an order under section 273 Insolvency Act 1986, has a petition presented for an Administration Order under Part III Insolvent Partnerships Order 1994 ("the Order"), has a petition presented for winding up as an unregistered company under Part IV or V of the Order, has an interim receiver of its property appointed under section 286 Insolvency Act 1986, is unable to pay its debts within the meaning of sections 267 and 268 Insolvency Act 1986, has a receiver or manager appointed over any of its assets, has a receiver appointed under the Mental Health Act 1983, dies or by reason of any illness (including mental disorder or infirmity), accident or injury or any other cause whatsoever becomes unable for a consecutive period of 3 months or for an aggregate period of 5 months in any one consecutive period of 12 months to comply with its obligations under this Contract; or

12.3.4 has any distraint, execution or other process levied or enforced on any of its material property.

- 12.4 The NCTL may terminate this Contract (or any part of it) immediately by written notice to the Provider if:

12.4.1 the Provider has a change in control (as defined in sections 416 and 840 of the Income and Corporation Taxes Act 1988); or

12.4.2 the Provider being an individual, is subject to a term of imprisonment whether or not suspended.

- 12.5 The NCTL may terminate this Contract (or any part of it) at any time without any liability to the Provider, save that detailed in clauses 12.6, by serving 3 months' written notice on the Provider where any funding from governmental or other sources for the provision of the Services, or for a programme or a project to which the provision of the Services relates (including the Programme), or HCPC approval for the training, is withdrawn, reallocated or no longer available in such a way that the Programme cannot reasonably continue. The NCTL may also terminate this Contract (or any part of it) at any time by giving at least 3 months' prior written notice to the Provider.

- 12.6 If the NCTL terminates under **clause 12.5** then it shall pay to the Provider by way of compensation for all relevant identified loss, reasonable costs and expenses incurred by the Provider as a consequence of such termination:

12.6.1 such part of the Charges that are then properly due and payable to the Provider pursuant to **clause 3** and **Schedule 3**; and

12.6.2 any disengagement and other costs reasonably and unavoidably incurred by the Provider as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs), provided that the Provider shall use all

transfer of the Services by the NCTL.

13 TUPE REGULATIONS

- 13.1 Not later than 6 Months prior to the end of the Initial Term, or any Extended Period where applicable the Provider shall fully and accurately disclose to the NCTL all information that the NCTL may reasonably request in relation to the Staff including the following:
- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Initial Term or any extended Period where applicable;
 - (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in **clause 13.1(a)**;
 - (c) the terms and conditions of employment/engagement of the Staff referred to in **clause 13.1(a)**, their job titles and qualifications;
 - (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
 - (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- 13.2 At intervals determined by the NCTL (which shall not be more frequent than once every 60 days) the Provider shall give the NCTL updated TUPE Information.
- 13.3 Each time the Provider supplies TUPE Information to the NCTL it shall warrant its completeness and accuracy and the NCTL may assign the benefit of this warranty to any Replacement Contractor.
- 13.4 The NCTL may use TUPE Information it receives from the Provider for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Initial Term or any Extended Period where applicable. The Provider shall provide the Replacement Contractor with such assistance as it shall reasonably request
- 13.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Provider shall indemnify and keep indemnified the NCTL and the Crown (both for themselves and any Replacement Contractor) against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the NCTL or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
- (a) the provision of TUPE Information;
 - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Initial Term or any Extended Period where applicable;
 - (c) any failure by the Provider or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
 - (d) any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Provider or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - (e) any claim by any person who is transferred by the Provider to the NCTL

- 15.5 The Provider shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Provider to have any Relevant Convictions (whether as a result of a police check or through the Criminal Records Bureau procedures or otherwise), is employed or engaged in the provision of any part of the Services without the NCTL's prior and express written consent.
- 15.6 For each of the Provider Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the NCTL owes a special duty of care the Provider shall (and shall procure that any relevant sub-contractor shall):
- 15.6.1 conduct thorough questioning regarding any Relevant Convictions; and
 - 15.6.2 ensure a police check is completed and such other checks as may be carried out through the Criminal Records Bureau, and the Provider shall not (and shall ensure that any sub- Provider shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.
- 15.7 The Parties have agreed to the appointment of the Key Personnel and Key Sub-Providers listed in **Schedule 8** as at the Effective Date. The Provider shall and shall procure that any sub-contract shall obtain the prior written consent of the NCTL before removing or replacing any of the Key Personnel or Key Sub-Providers during the term of this Contract (and when carrying out termination assistance and on-going service provision following termination or expiry of this Contract) other than where the Provider or Sub-Provider is, in light of all the circumstances, taking reasonable disciplinary related action in which case no such consent shall be necessary. Where possible, at least three months' written notice must be provided by the Provider of its intention to remove or replace any Key Personnel or Key Sub-Provider.
- 15.8 The NCTL shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel role by the Provider or any Key Sub-Provider.
- 15.9 The Provider acknowledges that the Key Personnel and Key Sub-Providers are essential to the proper provision of the Services to the NCTL. The Provider will use reasonable endeavours to ensure that the role of any Key Personnel or Key Sub-Provider is not vacant for any longer than 10 Business Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel or Key Sub-Provider whom he or she has replaced. The Provider shall ensure that appropriate and effective handover arrangements are put in place to ensure that there is no adverse impact on service provision as a result of any change in Key Personnel or Key Sub-Provider.
- 15.10 The Provider will use reasonable endeavours to ensure that each of the Key Personnel shall work for such a period of time in the performance of the Services that is commensurate with and sufficient to perform the obligation of that person's role unless the NCTL otherwise gives its prior written consent. To the extent that it can do so without disregarding its statutory obligations, the Provider shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.
- 15.11 The NCTL and the Provider shall agree the Key Personnel, who will then be included on the list of Key Personnel by the Provider. The NCTL may also require the Provider to remove any Key Personnel that the NCTL acting reasonably considers in any respect unsatisfactory.
- 15.12 The NCTL shall not be liable for the cost of replacing any Key Personnel and the Provider shall indemnify the NCTL against all Employment Liabilities that may arise in this respect.
- 15.13 Save in respect of: (i) an individual who has applied for a position in response to a job advertisement; and (ii) any transfer of staff under TUPE, for the duration of the Contract

national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by NCTL in connection with any such assessment or claim.

The Provider authorises the NCTL to provide HMRC and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not NCTL is obliged as a matter of law to comply with such request.

17 EQUALITY AND DIVERSITY

- 17.1 The Provider will, and will procure that all Provider Personnel will, comply with all the provisions of the Equality Act 2010 or any other relevant or equivalent legislation, or any statutory modification or re-enactment thereof and with the NCTL's equality and diversity policy as may be amended from time to time, copies of which will be provided by the NCTL to the Provider at the Provider's written request.
- 17.2 The Provider will indemnify the NCTL in full from and against all Employment Liabilities that may arise as a result of any claims brought against the NCTL by any of its employees, agents, consultants and Providers (include former such persons) ("NCTL Personnel") and/or any of the Provider Personnel where such claim arises from any act or omission of the Provider or any Provider Personnel in respect of anti-discrimination legislation. The Provider will also provide all reasonable cooperation, assistance and information as the NCTL may request in connection with any investigation by the NCTL into any complaint or other grievance received by it from any of the NCTL Personnel or Provider Personnel in respect of anti-discrimination legislation which may have arisen from, or been contributed to by, any act or omission of the Provider or any Provider Personnel.

18 ASSIGNMENT AND SUPPLY CHAIN RIGHTS

- 18.1 Save and to the extent set out in this **clause 18** only, the Provider may not assign the benefit and/or delegate the burden of the whole or any part of this Contract without the prior written consent of the NCTL, which shall not be unreasonably withheld or delayed. If the NCTL agrees to the Provider assigning its rights and obligations under this Contract to any Consortium Member or another third party then the Provider will enter into and will procure that the party to whom it is assigning its contractual rights and obligations enters into an assignment or novation agreement, in such form as reasonably required by the NCTL.
- 18.2 The NCTL may not assign its obligations under this Contract in whole or in part without first obtaining the written consent of the Provider which shall not be unreasonably withheld or delayed, provided that the NCTL shall be entitled to assign this Contract to any successor body to the NCTL (provided that such successor body is not a competitor of the Provider) without the need for consent.
- 18.3 The Provider shall not sub-contract any of its obligations under this Contract without the NCTL's prior written consent, which shall not be unreasonably withheld or delayed, provided that the NCTL's prior written consent shall not be required for sub-contracts with a value per annum not exceeding £10,000.
- 18.4 In making a request pursuant to **clause 18.3** the Provider shall, unless the NCTL notifies the Provider in writing that the same is not required in respect of a proposed sub-contract, provide the NCTL with such of the following information about the proposed Sub-Provider as the NCTL shall require:
- 18.4.1 its name, registered office and company registration number;
 - 18.4.2 a copy of the proposed sub-contract;
 - 18.4.3 the fees and charges to be paid by the Provider to the proposed Sub-Provider, including, where not fixed, the manner in which the same are to be calculated and any indexation or other review processes applicable thereto;

19 ENTIRE AGREEMENT

- 19.1 This Contract, its Schedules and Appendices contain all the terms which the Parties have agreed in relation to the subject matter of this Contract and supersedes any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.
- 19.2 Nothing in this **clause 19** shall however exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

20 DISPUTE RESOLUTION

- 20.1 Any Dispute shall be dealt with in accordance with this **clause 20**.
- 20.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within 15 days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.
- 20.3 If a Dispute cannot be resolved by negotiation as referred to in **clause 20.2** within 30 days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs of the reference.

21 NO PARTNERSHIP

- 21.1 Nothing in this Contract is intended to or shall operate to create a legal partnership between the Parties, or to authorise any Party to act as an agent for any other, and no Party shall have authority to act in the name or on behalf of or otherwise to bind any other in any way (including making any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22 VARIATION

- 22.1 No variation of this Contract shall be effective unless in writing and signed by a duly authorised officer of the Parties. Variations to this Contract must follow the procedure for change set out in **clause 14**.

23 WAIVER

- 23.1 No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

24 FORCE MAJEURE

- 24.1 If either Party is prevented or delayed in the performance of any of its obligations under this Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to **clause 24.3** have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 24.2 If either Party is prevented from performance of its obligations for a continuous period in excess of 3 Months, the other Party may terminate this Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

- 26.3.1 for any losses of an indirect or consequential nature; or
 - 26.3.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or
 - 26.3.3 to the extent that it is prevented from meeting any obligation under this Contract as a result of any breach or other default by the other Party.
- 26.4 Subject to **clauses 26.1 and 26.2**, the maximum liability of either Party to the other under this Contract, whether in contract, tort (including negligence) or otherwise:
- 26.4.1 in respect of damage to property is limited to £5,000,000 in respect of any one incident or series of connected incidents; and
 - 26.4.2 in respect of any claim not covered by **clause 26.4.1**, is limited in each calendar year in aggregate to 150% of the sum of the Charges payable by the NCTL and the Recipients' Charges received by the Provider in that Year of this Contract.
- 26.5 Notwithstanding the provisions of **clause 26.3**, the Provider shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure.
- 26.6 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 26.7 All property of the Provider whilst on the NCTL's premises shall be there at the risk of the Provider and the NCTL shall accept no liability for any loss or damage howsoever occurring to it.
- 26.8 The Provider shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the sum and range of cover as the NCTL deems to be appropriate but not less than £5,000,000 for any one claim, for professional indemnity insurances for the sum and range of cover as the NCTL deems to be appropriate but not less than £1,000,000 for any one claim and insurance to cover the liability of the Provider under this Contract. Such insurances shall be maintained for the duration of this Contract and for a minimum of 6 (six) years following the expiration or earlier termination of this Contract. The Provider shall supply to the NCTL on demand copies of the insurance policies maintained under this clause. The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability it has under, or in connection with, this Contract.

27 NOTICES

- 27.1 Any notice, demand or communication in connection with this Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, facsimile or e-mail, addressed to the recipient at its registered office or its address (or such other address, facsimile number or e-mail address as may be notified in writing from time to time).
- 27.2 The notice, demand or communication shall be deemed to have been duly served:
- 27.2.1 if delivered by hand, when left at the proper address for service;
 - 27.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;
 - 27.2.3 if given or made by facsimile or e-mail, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post or (where being sent to an address in a different country to where posted) airmail to the other Party within 24 hours after transmission and that, in the case of transmission by facsimile or e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such

referred to in this **clause 32** as a "Conflict of Interest". If the Provider becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this **clause 32** the Provider shall forthwith provide full particulars to thereof to the NCTL.

- 32.2 In performing its duties under this Contract, the Provider shall conduct its business, operations and activities in a politically neutral fashion.
- 32.3 Without prejudice to the foregoing provisions of this **clause 32**, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Provider will take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the NCTL (acting reasonably). If the NCTL is not reasonably satisfied with the outcome of the Provider having taken such action as aforesaid (the Provider having given the NCTL a comprehensive and detailed written statement of the action it had taken), the Provider will on request by the NCTL forthwith bring to an end any relationship it may have with any third party, where that relationship has given rise to the conflict of interest (or potential conflict of interest).
- 32.4 Without prejudice to any other right or remedy it may have, the NCTL reserves the right to terminate this Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the NCTL, there is any continuing breach by the Provider of the provisions of this **clause 32**.

33 PREVENTION OF CORRUPTION

- 33.1 The Parties represent and warrant that neither they, nor to the best of their knowledge any of their staff, have at any time prior to the Effective Date:
- 33.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 33.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 33.2 Neither Party shall during the Initial Term and any Extended Period:
- 33.2.1 commit a Prohibited Act; and/or
- 33.2.2 do or suffer anything to be done which would cause the other Party or any of its respective employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 33.3 The Provider shall, during the Initial Term and any Extended Period:
- 33.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- 33.3.2 keep appropriate records of its compliance with its obligations under **clause 33.3.1** and make such records available to the NCTL on request
- 33.4 A Party shall immediately notify the other Party in writing if it becomes aware of any breach of **clauses 33.1 and/or 33.2**.
- 33.5 A Party shall immediately notify the other Party in writing if it has reason to believe that it has or any of its staff have:
- 33.5.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 33.5.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a

Information.

35.6 Nothing in **clause 35** shall prevent the NCTL disclosing any Confidential Information obtained from the Provider:

35.6.1 for the purpose of the examination and certification of the NCTL's accounts;

35.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the NCTL has used its resources;

35.6.3 to any Crown Body or any Contracting Authority and the Provider hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;

35.6.4 to any consultant, contractor or other person engaged by the Authority provided that in disclosing information under **clauses 35.8 (c) and (d)** the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

35.7 Nothing in **clauses 35.1 to 35.6** shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

35.8 The NCTL shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the NCTL's Confidential Information is disclosed pursuant to **clause 35.6** is made aware of the NCTL's obligations of confidentiality.

35.9 If the Provider does not comply with **clauses 35.1 to 35.6** the NCTL may terminate the Contract immediately on notice to the Provider.

36 FREEDOM OF INFORMATION

36.1 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the EIR.

36.2 Each Party shall share with the other Party any Request for Information that it receives as soon as practicable and in any event within 5 Business Days of receipt:

36.2.1 give the other Party a copy of all Information in its possession or control in the form that the other Party requires within 10 Business Days (or such other period as the other Party may specify) of the other Party's request;

36.2.2 provide all necessary assistance as reasonably requested by the other Party to enable the other Party to comply with its obligations under the FOIA and EIR; and

36.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the other Party.

36.3 The Party in receipt of the Request for Information shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

37 TAX COMPLIANCE

- 38.8 Within 20 Business Days of being requested by the NCTL, the Provider shall transfer to the NCTL, or any person designated by the NCTL, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the NCTL.

39 EXIT MANAGEMENT AND PROCEDURES

- 39.1 Where the NCTL requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Provider shall co-operate fully with the NCTL and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- 39.2 The Provider will, within 3 Months after the Effective Date, deliver to the NCTL, the NCTL Plan which sets out the Provider's proposed methodology for achieving an orderly transition of Services from the Provider to the NCTL and/or its replacement provider on the expiry or termination of this Contract ("Exit Plan"). Within 30 days after the submission of the Exit Plan, the parties will use their respective reasonable endeavours to agree the contents of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan then such dispute shall be resolved in accordance with the dispute resolution procedure at **clause 20**.
- 39.3 The Provider will review and (if appropriate) update the Exit Plan in the first Month of each year of this Contract (commencing with the second year of this Contract) to reflect changes to the Services. Following such update the Provider will submit the revised Exit Plan to the NCTL for review. Within 30 days following submissions of the revised Exit Plan, the parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the parties are unable to agree the contents of the revised Exit Plan within the 30 day period, such dispute shall be resolved in accordance with the dispute resolution procedure in **clause 20**.
- 39.4 The following commercial approach shall apply to the transfer of the Services if the Provider:
- (a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Charges; or
 - (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Charges based on the Contractor's rates either set out in Schedule 2 or forming the basis for the Charges.
- 39.5 When requested to do so by the Authority, the Provider shall deliver to the NCTL details of all licences for software used in the provision of the Services including the software licence agreements.
- 39.6 Within one Month of receiving the software licence information described above, the NCTL shall notify the Provider of the licences it wishes to be transferred, and the Provider shall provide for the approval of the NCTL a plan for licence transfer.
- 39.7 The Provider shall co-operate fully with the NCTL in order to enable an efficient and detailed knowledge transfer from the Provider to the NCTL on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Provider shall provide the NCTL free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the NCTL. The Provider shall comply with the NCTL's request for information no later than 15 Business Days from the date that that request was made.

40 GOVERNING LAW AND JURISDICTION

Schedule 3

Financials and Invoicing

1 Financials

- 1.1 The NCTL shall pay the provider the Charges in accordance with the applicable Contract, subject to successful delivery of the programme against Key Performance Indicators or Service Levels pursuant to the provisions of the Requirement and **Schedule 4**.
- 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 between the provider and the NCTL, the Provider shall not be entitled to claim any expenses in addition to the Charges.
- 1.3 The Provider will distribute a tax free Bursary as part of the Programme. The Provider will pay directly to first year trainees the Bursary. The yearly Bursary for non London trainees will be £15,950. The Bursary payments are not subject to VAT.
- 1.4 NCTL will pay the Bursary to the Provider for distribution in three instalments, as follows:
 - 1.4.1 1 December – first payment of three months Bursary
 - 1.4.2 20 March – second payment of 4 months Bursary
 - 1.4.3 1 September third payment of 5 months Bursary
(in accordance with appendix 2 – Table 1)
- 1.5 All Charges will be firm and fixed for the Initial Term and until the expiry of any extended period of the Contract. The maximum value for this contract for the Initial term equates (course fees and bursaries) to £6,268,640.

This contract is VAT exempt
- 1.5.1 Unless otherwise stated, all amounts expressed as payable in this contract are inclusive of VAT, at the rate applicable at the time.
- 1.6 The NCTL reserves the right to review/analyse the detailed costs as set out in Appendix 3, in line with the programme model (as set out in **Schedule 13**) to ensure that the programme delivery demonstrates value for money.
 - 1.6.1 the NCTL will review/analyse costs at the end of Year 1 (July 2016), and the end of Year 2 (July 2017).
 - 1.6.2 After Cohort 1, costs will be reviewed as part of the agreed contract review process.

2 Indexation

- 2.1 Indexation shall not apply to any Charges.

3 Invoicing Arrangements

The Provider shall be entitled to invoice the Charges following acceptance by the NCTL of satisfactory completion of the Services or, where performance of the Services will continue, either monthly in arrears or on satisfactory completion of milestones as specified in the delivery milestones, Outputs or Outcomes (as set out in Table 1 below and within appendix 2). Each invoice shall detail the Charges.

- 4 Funds allocated to a particular expenditure heading in the table at paragraph 1 (the "Table") are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only. The allocation of funds in the Table may not be altered except with the prior written consent of the NCTL.
- 5 The provider shall maintain full and accurate accounts for the Service against the expenditure headings in the Table. Such accounts shall be retained for at least 6 years

any time before completion of the Service, the NCTL shall only be liable under paragraph 1 to reimburse eligible payments made by, or due to, the Provider before the date of termination.

- 11 On completion of the Service or on termination of this Contract, the Provider shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Service. The final invoice shall be submitted not later than 30 days after the date of completion of the Service
- 12 The NCTL shall not be obliged to pay the final invoice until the Provider has carried out all the elements of the Service specified as in **Schedule 1**.
- 13 It shall be the responsibility of the Provider to ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the NCTL all amounts due to be reimbursed under this Contract shall be deemed to have been paid and the NCTL shall have no further liability to make reimbursement of any kind.
- 14 Disputes and payments of invoices
 - 14.1 As set out in paragraph 8 above, The NCTL undertakes to pay, subject to paragraphs 14.4 and 14.5, correctly submitted invoices within 10 days of receipt for all sums properly invoiced. The NCTL shall not be responsible for any delay in payment caused by incomplete and illegible invoices.
 - 14.2 The Provider shall ensure that a term is included in any sub-contract permitted under this Contract which requires the Provider to pay any undisputed sums due to the relevant sub-contractor within a specified period that does not exceed thirty (30) days from the date the Provider receives the sub-contractor's invoice.
 - 14.3 The Provider shall raise any problems regarding invoices or payments with the NCTL's contract manager. The NCTL shall reply to queries or complaints within 10 Business Days.
 - 14.4 The NCTL shall within 10 Business Days of receipt, return to the Provider for correction invoices that it believes are incorrect together with an explanation of the need for correction.
 - 14.5 The NCTL may dispute, in good faith, any amount specified in an invoice. In these circumstances, the NCTL shall:
 - 14.5.1 Pay in accordance with paragraph 14.1 such amount of the invoice as is not in dispute;
 - 14.5.2 Within 10 Business Days of receipt by it of the disputed invoice notify the Provider of the reasons for disputing the disputed amount; and
 - 14.5.3 Be entitled to withhold the disputed amount pending resolution of the dispute.
 - 14.6 The NCTL and the Provider shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either party may refer the matter for resolution in accordance with the dispute resolution procedure in **clause 20 of Schedule 2**.
 - 14.7 Where a disputed amount is withheld in accordance with paragraph 14.5.3 and the dispute is subsequently resolved:
 - 14.7.1 The Provider shall within 10 Business Days re-submit a corrected invoice; or
 - 14.7.2 If the original invoice is resolved to have been correct, for the purposes of paragraph 14.1, the date of receipt of the invoice shall be taken to be the date on which the dispute is agreed by the Parties to have been resolved.

- latest graduation statistics and placement data.

KPI	Measurement Period	Measure	Monitoring method	Service Credit applied
100% recruitment to all EPFT scheme places	September to May	All 80 places are filled	Report from AEP on number of successful candidates and from the two consortia confirming names of trainees at each university	Yes
100% of monthly or termly reports which will update on recruitment, deferrals, placements and any causes of concern raised by trainees	Monthly	Reports will provide details of numbers of trainees who have: Deferred Withdrawn Placements And causes for concern	Monthly monitoring report Appendix 8	Yes
90% of respondents, to the annual survey of final year trainees on qualification, will rate the training as good or above	Oct 2019 Oct 2020	72 trainees respond rating the survey good or above	Provider to issue annual survey	No
At least 90% of trainees will qualify upon completion of the course	Oct 2019 Oct 2020	At least 72 trainees will qualify	Monthly reports from provider	No
100% of the provider have and are implementing a strategy for ensuring the quality of training is maintained as the contract comes to an end, for the final intake	On-going for the duration of the contract	Agreed Exit Plan		Yes
At least 90% of trainee will find employment within 2 months of qualifying	Aug – Jan 2020 Aug – Jan 2021	At least 72 trainees will find employment within 2 months of qualifying	Graduation data from provider	No
The Provider will attend at least one contract management meeting a year at the nearest or most convenient DFE office subject to availability	On-going for the duration of the contract	At least one meeting attended	Face to face meeting	No

Schedule 5

Implementation Plan

1. The Provider shall provide the Services in accordance with the Implementation Plan set out in **Appendix 3** to this Contract.
2. The Implementation Plan should be sufficiently detailed as is necessary to manage the Services and proposed any changes to the Implementation Plan shall be subject to the Change Control Procedure.
3. The Provider shall be responsible for implementing and managing the Services and for taking all such steps as may be necessary so as to ensure that from the Service Commencement Date the Provider is able to provide the Services:
 - 3.1 in accordance with the provisions of this Contract as at the Service Commencement Date, and any other requirements of this Contract; and
 - 3.2 in a manner that maintains the continuity of service to the NCTL.
4. The Provider shall monitor the performance against the Implementation Plan and report to the NCTL monthly (or more frequently if so required by the NCTL) on its performance.

- 3.5 Board meetings shall be quorate as long as at least 2 representatives from each Party are present.
- 3.6 The Parties shall ensure, as far as reasonably practicable, that the Board shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before it. Each Party shall use its best endeavours to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 ROLE OF BOARD

- 4.1 The Board shall:
 - 4.1.1 ensure that this Contract is operated throughout the term in a manner which optimises the value for money and operational benefit derived by the NCTL and the commercial benefit derived by the Provider;
 - 4.1.2 receive and review reports from the Project Manager(s) which summarise key aspects of the operation and delivery of the Services, performance against KPIs/Service Levels; progress against the Implementation Plan, possible future developments;
 - 4.1.3 determine business strategy and provide guidance on policy matters which may affect the implementation of the Services or on any potential future or additional Services authorise the commissioning and initiation of new business change projects and shall assess opportunities for future services and/or additional Services;
 - 4.1.4 consider and resolve Disputes (including Disputes as to the cause of a delay to the Services or the performance of the Services) escalated to the Board;
 - 4.1.5 recognise and promote participation in cross-governmental initiatives; and
 - 4.1.6 develop the NCTL/Provider relationship so that it supports delivery of the Services in a positive manner.

5 CONTRACT MANAGEMENT MECHANISMS

- 5.1 Both Parties will pro-actively manage risks attributed to them under the terms of this Contract.
- 5.2 The Provider will develop, operate, maintain and amend, as agreed with the NCTL, processes for:
 - 5.2.1 the identification and management of risks. The project risk and issues register (**Appendix 6**) will be completed by the Provider and submitted for review by both Parties at the Board;
 - 5.2.2 the identification and management of issues; and
 - 5.2.3 monitoring and controlling progress against the Implementation Plan.

6 ANNUAL REVIEW

- 6.1 Annual review meetings shall be held, on dates to be agreed by the Parties, throughout the duration of the Contract.
- 6.2 The meetings will be attended by the Project/Contract Manager of the Provider and the Project Manager/Contract Manager of the NCTL and any other persons considered by the NCTL necessary for the review.

7 CHANGE CONTROL

Minor Changes

- 7.1 The Parties acknowledge that minor variations to this Contract may be necessary to reflect operational and administrative procedures during the term of the Contract. The Parties further acknowledge that such minor variations shall be agreed in writing between the Parties' respective Project/Contract Managers.
- 7.2 The Provider shall use reasonable endeavours to incorporate minor variations requested by the NCTL within the current Charges for the Services and shall not serve

- 7.7 Where the Change Estimate is less than £5,000 the Provider shall identify the agreed required services and relevant expenditure and show clearly how the Change Estimate is achieved.
- 7.8 As soon as practicable after the NCTL receives the Change Response, the Parties shall discuss and agree the issues set out in the Change Response. In such discussions:
- a) the NCTL may modify the NCTL Notice of Change, in which case the Provider shall, as soon as practicable and in any event within 21 days, after receipt of such modification, notify the NCTL of any consequential changes to the Change Response; and
 - b) where the NCTL reasonably request, the Provider shall provide such additional information as the NCTL reasonably request in order to evaluate the Change Response fully.
- 7.9 At the reasonable request of the NCTL, the Provider shall provide an additional Change Estimate (a "Further Change Estimate") to validate the Change Estimate using an alternative estimating approach agreed between the NCTL and the Provider.
- 7.10 Where there is a 10% or greater variation in the overall cost to the NCTL between the Further Change Estimate and the Change Estimate, the NCTL may request a re-working of the Change Estimate.
- 7.11 If the Parties cannot agree on the contents of the Change Response then the Dispute will be determined in accordance with **clause 20**.
- 7.12 As soon as practicable after the contents of the Change Response have been agreed or otherwise determined pursuant to **clause 20**, the NCTL shall:
- a) confirm in writing the Change Response by issuing a Contract Change Control Note ("CCN") as below (as modified); or
 - b) withdraw the NCTL Notice of Change.
- 7.13 If the NCTL does not confirm in writing the Change Response (as modified) within 30 days of the contents of the Change Response having been agreed or determined, then the NCTL Notice of Change shall be deemed to have been withdrawn.
- 7.14 If the Change has been agreed in accordance with this paragraph 7.3.1 then:
- a) the Provider shall implement the Change in accordance with the CCN and Change Implementation Plan; and
 - b) the Charges shall be adjusted in accordance with the agreed CCN once the Change Implementation Plan is complete and accepted by the NCTL in accordance with the agreed implementation criteria.
- 7.15 Until a Change is made in accordance with the Change Control Procedure, the Provider shall, unless otherwise agreed in writing, continue to supply the Services as if the request or requirement had not been made.
- 7.16 Any discussions which may take place between the NCTL and the Provider concerning a requirement for a Change before the authorisation of a resultant Change to the Services shall be without prejudice to the rights of either Party.
- 7.17 Any Change to the Services undertaken by the Provider, its Sub-Providers or agents which has not been authorised in advance in writing by the NCTL and which has not been otherwise agreed in writing in accordance with this Change Control Procedure shall be undertaken entirely at the expense and liability of the Provider.
- 8 In respect of Changes proposed by the Provider ("Provider Notice of Change"):
- 8.1 If the Provider wishes to introduce a Change to the Contract, it must serve a Provider Notice of Change on the NCTL.
- 8.2 The Provider Notice of Change must:
- a) set out the proposed Change in sufficient detail to enable the NCTL to evaluate it in full;

CCN

Contract Number	RD1043	NCTL Contract / Programme Manager [insert Name]
Provider	[insert name] supplier	Original Contract Value (£)
Contract Start Date	[insert start date]	Contract Expiry Date [insert contract expiry date]

Variation Requested	
Originator of Variation (tick as appropriate)	NCTL <input type="checkbox"/> Provider <input type="checkbox"/>
Date	
Reason for Variation	
Summary of Variation (e.g. specification, finances, contract period)	
Date of Variation commencement	
Date of Variation expiry (if applicable)	
Total Value of Variation £ (if applicable)	
Payment Profile (if applicable) e.g. milestone payments	
Revised daily rate (if applicable)	

Schedule 7

The NCTL's Obligations

The NCTL shall:

- Approve all press releases and media statements via its Media Relations Team
- Approve all messaging and materials that the Provider develops for marketing purposes before use
- Sign off the assessment process developed by the Provider in collaboration with the NCTL
- Develop in collaboration with the Provider, a quality assurance framework for this programme which, following agreement on QA tools and processes, the Provider shall implement within the Programme
- Commission independent third parties to carry out a Longitudinal Evaluation of this programme
- Use evidence gathered through the NCTL QA processes, the longitudinal evaluation of this programme and the tracking of alumni to inform programme development, and manage programme development in collaboration with the Provider
- Share information that can help the Provider to improve their understanding of school leaders and the marketplace and develop their provision to higher levels of service and customer satisfaction
- As Data Controller for the programme, ensure data accuracy and security according to the Data Protection Act and **Schedule 11**
- Proactively manage the contract, including managing change to the Contract and reviewing the Provider's performance
- Be responsible for all costs it incurs in relation to any accrediting or approving it undertakes in relation to this Contract.
- Sign off/approve in advance any marketing activities and spend as set out in the Marketing plan (**Appendix 6**)

Where there is an obligation on the NCTL to approve any process or material, the NCTL aims to provide comments or objections in relation to any materials or processes within 7 Business Days from receiving such information, unless otherwise agreed between the Parties. If NCTL fails to respond within 10 Business Days of receiving such unless otherwise agreed between the Parties, the NCTL will be deemed to have supplied such approval.

Key Sub-Providers

In accordance with **Clause 15** (Personnel and Sub-Providers) of this Contract the following individuals listed in the table below shall be considered Key Sub-Providers.

In accordance with **Clause 18** (Assignment and Supply Chain Rights) of this Contract, the Provider is entitled to Sub-contract its obligations under this Contract to the following Sub-Providers listed in the table below to be agreed at contract award stage.

This Schedule shall be finalised at contract clarification/fine tuning stage and will be comprised of the Specification issued with the ITT

Key Sub-Provider Name and Address (if not the same as the registered office)	Registered Office and Company Number	Related Product/Service Description	Sub-contract Price expressed as a percentage of total projected Charges over lifetime of the Agreement	Role in delivery of the Services
Tavistock and Portman NHS Foundation Trust	100119 – (NHS trust License Number.) Registered address: 120 Belsize Ln London NW3 5BA	Provision of three year initial doctoral training for Educational Psychologists	19.8%	Delivery of integrated doctoral training programmes that are approved by the Health and Care Professions Council and accredited by the British Psychological Society
University of Southampton	RC 000668 Registered address: The University of Southampton University Road Highfield Southampton SO17 1BJ	Provision of three year initial doctoral training for Educational Psychologists	19.5%	Delivery of integrated doctoral training programmes that are approved by the Health and Care Professions Council and accredited by the British Psychological Society

Schedule 9**Step In Rights****Step In Rights**

"Default"	any material breach of this Contract or any other event such as would entitle the other party to terminate this Contract in accordance with clause 12 of Schedule 2;
"Delay"	the period of time by which the implementation of the Services by reference to the Implementation Plan is delayed arising from a failure to achieve a milestone;
"Insolvency Event"	<p>(a) the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity:</p> <ol style="list-style-type: none"> 1. the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved; 2. the appointment of an administrator of, or, the making of an administration order in relation to, the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the entity's undertaking, assets, rights or revenue; 3. the entity entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors; 4. the entity being unable to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or 5. the entity entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors; <p>however, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event; and amalgamation shall not amount to an Insolvency Event;</p>
"Regulatory Bodies"	those government and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules,

then the NCTL may take action under this clause either through itself or with the assistance of third party contractors, provided that the Provider may require any third parties to comply with any confidentiality undertaking.

6 If the NCTL takes action pursuant to **clause 5**, the NCTL shall serve notice ("Step-in Notice") on the Provider. The Step-in Notice shall set out the following:

- 6.1 the action the NCTL wishes to take and in particular the Services it wishes to control;
- 6.2 the reason for and the objective of taking the action and whether the NCTL reasonably believes that the primary cause of the action is due to the Provider's Default;
- 6.3 the date it wishes to commence the action;
- 6.4 the time period which it believes will be necessary for the action;
- 6.5 whether the NCTL will require access to the Provider's premises;
- 6.6 to the extent practicable, the effect on the Provider and its obligations to provide the Services during the period the action is being taken.

7 Following service of a Step-in Notice, the NCTL shall:

- 7.1 take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary to achieve (together, the "Required Action");
- 7.2 keep records of the Required Action taken and provide information about the Required Action to the Provider;
- 7.3 co-operate wherever reasonable with the Provider in order to enable the Provider to continue to provide any Services in relation to which the NCTL is not assuming control; and
- 7.4 act reasonably in mitigating the cost that the Provider will incur as a result of the exercise of the NCTL's rights under this clause.

8 For as long as and to the extent that the Required Action is continuing, then:

- 8.1 the Provider shall not be obliged to provide the Services or Project to the extent that they are the subject of the Required Action;
- 8.2 subject to paragraph 9 the NCTL shall pay to the Provider the Charges after the deduction of any applicable Service Credits and the NCTL's reasonable costs of taking the Required Action.

9 If the Required Action results in:

- 9.1 the degradation of any Services or Project not subject to the Required Action; or
- 9.2 the non-achievement of a milestone,

beyond that which would have been the case had the NCTL not taken the Required Action, then the Provider shall be entitled to an agreed adjustment of the Charges, provided that the Provider can demonstrate to the reasonable satisfaction of the NCTL that the Required Action has led to the degradation or non-achievement.

10 Not less than 30 Business Days before ceasing to exercise its step in rights under this clause the NCTL shall deliver a written notice to the Provider ("Step-Out Notice"), specifying:

- 10.1 the Required Action it has actually taken; and
- 10.2 the date on which the NCTL plans to end the Required Action ("Step-Out Date") subject to the NCTL being satisfied with the Provider's ability to resume the provision of the Services or Project and the Provider's plan developed in accordance with paragraph 11.

11 The Provider shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the Step-Out Date, develop for the NCTL's approval a draft plan ("Step-Out Plan") relating to the resumption by the Provider of the Services or Project, including any action the Provider proposes to take to ensure that the affected Services or Project satisfy the requirements of this Contract.

Schedule 10

Data, Systems Handling and Security

Definitions

"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Provider Personnel"	all employees, agents and contractors of the Provider and/or of any Sub-contractor;
"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
"NCTL Assets"	includes but is not limited to NCTL premises, IT systems and information with a classification up to confidential.
"DPA"	the Data Protection Act 1998 and equivalent successive legislation
"Data", "Data Processor", "Personal Data", "Sensitive Personal Data", Subject", "Process" and "Processing"	shall have the meanings given to those terms by the Data Protection Act 1998
"Data controller"	A person who, either alone or jointly or in common with other persons, determines the purposes for which and the manner in which any personal data are, or are to be, processed.
"Data controller in common"	where 2 or more persons share a pool of personal data that they process independently of each other.
"Data Subject"	a living individual to whom personal data relates
"ICT"	information and communications technology;
"ICT Environment"	the NCTL's ICT system and the Provider's ICT system;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Personal Data/Information"	data/information relating to a living individual who is or can be identified either from the data or from the data

any complaint or request made, including by:

1.3.9.1 providing the Data Controller with full details of the complaint or request;

1.3.9.2 complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Data Controller's instructions;

1.3.9.3 providing the Data Controller with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Data Controller); and

1.3.9.4 providing the Data Controller with any information requested by the Data Controller;

1.3.10 permit the Data Controller or any duly authorised representative of the Controller (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Data Processor's data processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Data Controller to enable the Data Controller to verify and/or procure that the Data Processor is in full compliance with its obligations under this Contract;

1.3.11 provide a written description of the technical and organisational methods employed by the Data Processor for processing Personal Data (within the timescales required by the Data Controller); and

1.3.12 not Process or otherwise transfer any Personal Data outside the European Economic Area ("EEA"). If, after the Effective Date, the Data Processor (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside the EEA, the following provisions shall apply:

1.3.12.1 the Data Processor shall submit a request for change to the Data Controller

1.3.12.2 the Data Processor shall set out in its request for change details of the following:

(a) the Personal Data which will be Processed and/or transferred outside the EEA;

(b) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the EEA;

(c) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the EEA; and

(d) how the Data Processor will ensure an adequate level of protection and adequate safeguards (in accordance with the DPA and in particular so as to ensure the Data Processor's compliance with the DPA) in respect of the Personal Data that will be Processed and/or transferred outside the EEA;

1.3.12.3 in providing and evaluating the request for change, the Parties shall ensure that they have regard to and comply with then-current NCTL, Provider, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the EEA and/or overseas generally; and

1.3.12.4 the Data Processor shall comply with such other instructions and shall carry out such other actions as the Data Controller may notify in writing, including:

a) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under its data protection legislation) in this Contract or a separate data processing agreement between the Parties; and

b) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data outside the EEA enters into a direct data processing agreement with the recipient on such terms as may be required by the Data Controller, which the Data Processor acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under its data protection legislation).

1.4 Insofar as the Data Processor processes personal data for its own administrative

- 2.7 The Provider shall not keep the NCTL's Data on any laptop or other removable drive or device unless that laptop, other removable drive or device is protected by being fully encrypted and password protected, and the use of the device or laptop is necessary for the provision of the services set out in the Contract. Laptops should have full disk encryption using either a CESSG (Communications Electronic Security Group) CAPS approved product or alternatively a product that complies with the FIPS 140-2 Standard. USB devices used for transferring the NCTL's Data should be encrypted to the FIPS 140-2 Standard.
- 2.8 The Provider shall keep an audit trail of where the NCTL's Data is held, including hardware, laptops, drives and devices.
- 2.9 The Provider shall ensure that the NCTL's Data is stored in locked cabinets and is accessed only by the Provider's authorised Personnel.
- 2.10 The Provider shall ensure that the NCTL's Data is securely removed from their systems and any printed copies securely destroyed at the end of this work, or on termination of the contract. In complying with this clause, electronic copies of the NCTL's Data shall be securely destroyed by either physical destruction of the storage media or secure deletion using appropriate electronic shredding software, using a minimum setting of US DOD overwriting standard (7 passes). Any hard copy shall be destroyed by cross-cut shredding and secure re-cycling of the resulting paper waste.
- 2.11 The Provider shall perform secure back-ups of all the NCTL's Data and shall ensure that up-to-date back-ups are stored off-site. The Provider shall ensure that such back-ups are available to the NCTL at all times upon request.
- 2.12 The Provider shall ensure that any of the NCTL's Data to be sent between the Provider's offices/staff, and/or any Sub-contractors, and/or any other third party are sent by CD or DVD and are fully encrypted and password protected. The Provider shall ensure that the password for files is sent separately from the data to the named recipient of the data. The NCTL's Data shall be transferred by a secure courier or registered postal service (special delivery) and not by e-mail or on USB pens.
- 2.13 If the NCTL's Data is corrupted, lost or sufficiently degraded as a result of the Provider's Default so as to be unusable, the NCTL may:
- 2.13.1 require the Provider at the Provider's expense to restore or procure the restoration of the NCTL's Data as soon as practicable and/or
- 2.13.2 itself restore or procure the restoration of the NCTL's Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so.
- 2.14 If at any time the Provider suspects or has reason to believe that the NCTL's Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the NCTL immediately and inform the NCTL of the remedial action the Provider proposes to take.

3. Personnel Security Standard

- 3.1 The Provider shall ensure that any personnel provided under this Contract including those of any Sub-contractors, who have unsupervised access to NCTL Assets meet the Personnel Security Standard and shall provide evidence that the checks have been performed on request. The HMG Baseline Personnel Security Standard can be accessed here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200551/HMG_Baseline_Personnel_Security_Standard_V3_2_Apr-2013.pdf
- 3.2 A breach of this paragraph 3 shall entitle the NCTL to terminate the Contract immediately.

ANNEX 1 to Schedule 10

NCTL SECURITY STANDARDS

Definitions:

1.

"Good Industry Standard" means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

"NCTL Security Standards" means the NCTLs specification for security that the Provider is required to deliver.

"IT Security Health Check" means an assessment to identify vulnerabilities in IT systems and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.

NCTL Security Standards

1. For contracts which require the handling or processing of NCTL Data (Business Impact Level 2 Personal Data and/or Business Impact Level 2 non-personal Data), the Provider shall assure the NCTL that they can comply with the NCTL Security Standards
2. The Provider will be expected to conform with ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice) or any appropriate equivalent.
3. The Provider will adopt the Protective Marking Scheme of the UK Government (GPMS) in respect of any NCTL Data being handled in the course of providing the Services, and will handle this data in accordance with its protective marking and Impact Level. (In the event that the Provider has an existing Protective Marking Scheme the Provider may continue to use this but must map the GPMS against it to ensure the correct controls are applied to the NCTL Data);
4. NCTL Data being handled in the course of providing the Services must be segregated from other data on the Provider's own IT equipment to protect the NCTL Data and enable it to be securely deleted when required. If it is not possible to segregate the NCTL Data then the Provider is required to ensure that it is stored in such a way that it is possible to securely delete the data in line with paragraph 2.10 of Schedule 10.
5. The Provider will have in place and maintain physical (e.g. door access) and logical (e.g. identification and authentication) access controls to ensure only authorised access to NCTL Data;
6. The Provider will have in place and maintain technical safeguards to protect NCTL Data, including but not limited to: Good Industry Standard anti-virus and firewalls; up-to-date patches for operating system, network device, and application software;
7. Any electronic transfer methods across public space or cyberspace must be protected via encryption which has been certified to FIPS140-2 or certified under a CESSG (e.g. CAPS or CPA) or CESSG-endorsed scheme, and the method shall be approved by the NCTL prior to being used for the transfer any NCTL Data. Should the transfer, handling removable media or handling of portable ICT Equipment involve bulk personal data then the encryption will be required to be certified under a CESSG (e.g. CAPS or CPA) or CESSG-endorsed scheme.
8. Any portable removable media (including but not constrained to pen drives, memory sticks, CDs, DVDs, PDPs, USB devices) which handle, store or process in any way NCTL Data (*where the data is deemed to be personal and/or sensitive*) to deliver and

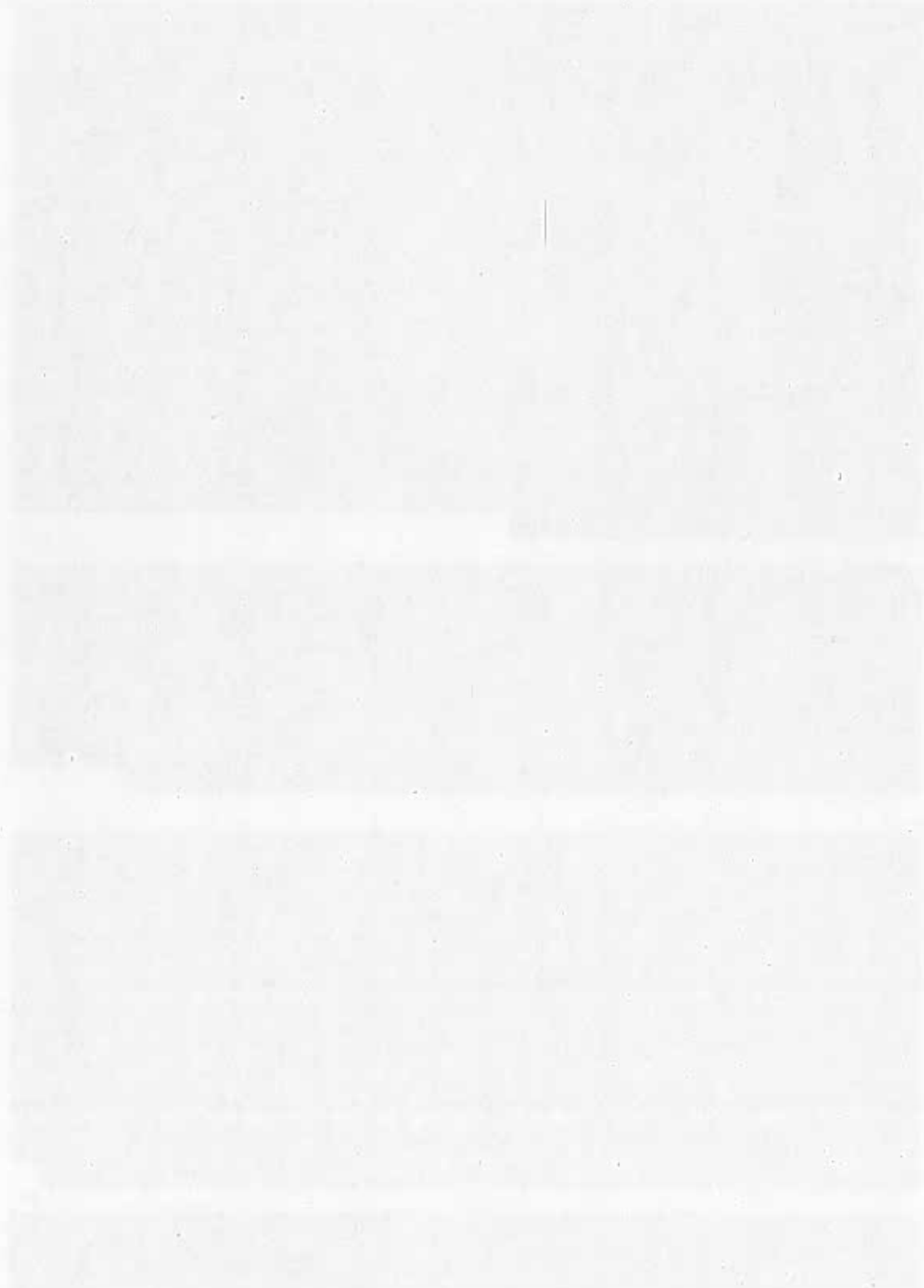
RD10000162 Initial Training for Educational Psychologists Contract

19. The Provider shall keep an audit trail of where the NCTL's Data is held, including hardware, laptops, drives and devices. The NCTL may audit the Provider with 24 hours' notice in respect to the Provider's compliance with this Schedule;
20. The Provider shall contractually enforce all these NCTL/Department Security Standards onto any third party suppliers, Sub-contractors or partners who could potentially access NCTL Data in the course of providing or assisting the Provider with the provision of the Services.

Schedule 12

Commercially Sensitive Information

Non advised at the time of Contract award



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<http://www.nslc.ac.uk/education/initial-training/initial-training-2014-15>

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Appendix A

TEES - SEEC

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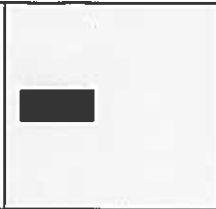

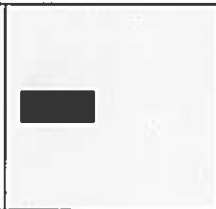
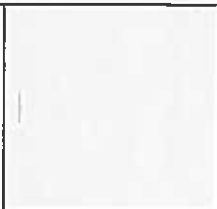

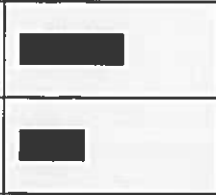

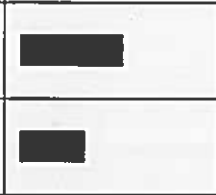
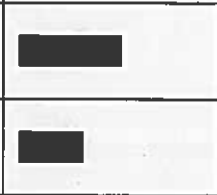


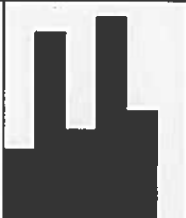







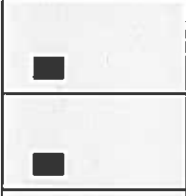


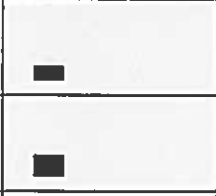
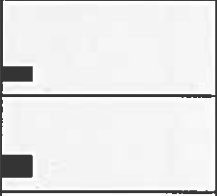










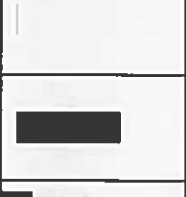
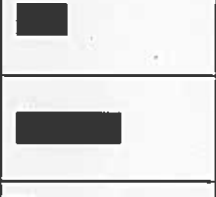
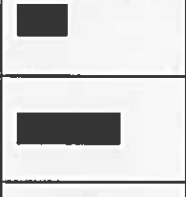
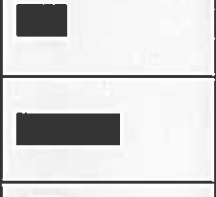
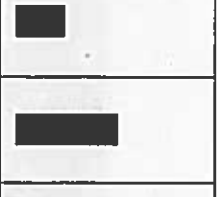















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Abstract

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Appendix 2 – Cost matrix (Section 11)

The total cost evaluation section is weighted at **30%** and will be only evaluated if Bidders have scored a minimum of **60%** within the technical evaluation section.

The contract costs will be evaluated in three separate sections (Sections 11, 12 & 13):

Section 11 – Item Price/Whole Life Contract Cost (5%) Exclusive of Cost but Inclusive of all expenses.

From your costed options, please submit the total Contract cost (for the duration of the contract) that you believe provides the best value for money.

Section 12– Cost Analysis (20%)

Bidders need to submit a total whole life contract cost (for the duration of the contract) within Section 11. To support your proposed total contract cost, we also require you complete the attached Cost Analysis Matrix (Appendix 4), providing details as outlined. The matrix should be uploaded as part of your tender submission.

Section 13 - Cost at risk analysis (5%)

Percentage of the Bidder's proposed annual service charge (ASC) that it is prepared to put at risk against non-achievement of the KPI's **(5%)**

Bidders need to submit a total contract cost (for the duration of the contract) within the Item Price (Section 9) and the percentage figure ASC that it is prepared to put at risk against non-achievement of the KPI's (Section 10) on REDIMO. To support your proposed contract cost, we also require you complete this Cost Analysis Matrix providing details as outlined below. NCTL encourages Bidders to take into consideration that the Total Cost evaluation section and respective weightings as low cost alone will not guarantee a successful bid.

Bidders should illustrate how they will progressively increase Value for Money (VFM) year on year.

Supplier Guidance: Please complete the table as follows with as much information as possible and Bidders are welcome to insert additional rows to add further cost areas or additional breakdown of areas.

Please also provide as much information as possible regarding any assumptions made to reach proposed figures. Details of discounts applied and how potential cost savings could be achieved would be beneficial to your bid.

IMPORTANT NOTE

Bidders are asked to note that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations, as amended from time to time) may apply to staff employed by the incumbent supplier to deliver the current programme delivery model.

Please state all/any assumptions and detail any savings or additional income streams that have been factored into your financial modelling

RD10000162 Initial Training for Educational Psychologists Contract

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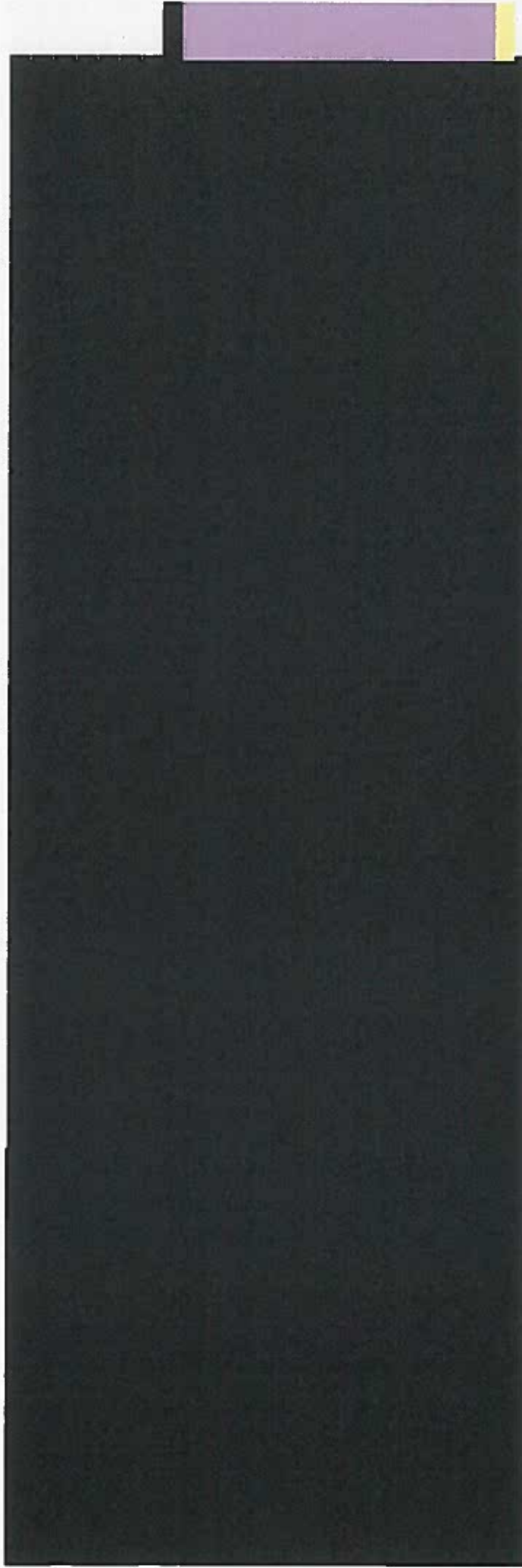
Appendices

(Separate Documentation)

Appendix 1	Equality and Diversity Policy
Appendix 2	Detailed Cost Matrix
Appendix 3	Detailed Implementation Plan
Appendix 4	SEEL Consortium Chart
Appendix 5	Risks and Issues Register
Appendix 6	Provider's Bid Clarification
Appendix 7	Initiation to Tender
Appendix 8	Monthly Reporting Template
Appendix 9	Service Credit process (to be confirmed

Appendix 2
Detailed Cost Matrix

Payment is made for the number of students on the course. The Provider will provide monthly reports on course trainees.



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Appendix 6

Bidder Clarification

Posted By	Date	Question
Craig Heatley	01/06/15	<p>Please note that the Evaluation Criteria document has been slightly amended to ensure clarity regarding the bidder clarification questions (post tender responses). Please see the revised statement:</p> <p>Clarification Questions: All shortlisted Tenderers may be invited to answer further clarification questions as part of the evaluation of their Tender. The clarification questions will be used to finalise the evaluation panel's initial scores from the desktop evaluation. Clarifications are anticipated to take place the week commencing 6th July 2015 and Bidders need to be aware that clarifications may be via an email request or Bidders may be invited to attend Clarification meetings with NCTL within that week.</p>
Craig Heatley	01/06/15	<p>Dear bidder,</p> <p>There has been a slight amendment to Cost Matrix document on page 1, which now reads:</p> <p>The total cost evaluation section is weighted at 30%. Please note that the NCTL may at its absolute discretion refuse to consider your response further if the score achieved in the technical requirements section is lower than 60%.</p> <p>Please note that there are no other changes to the document.</p> <p>Kindest regards</p> <p>DFE Major Commercial Projects Team</p>
Cassie Woods Sherida Kirby	05/06/15 8/06/15	<p>Q With regard to question 11.01 ("Please confirm the percentage of your proposed annual service charge (ASC) that you are prepared to put at risk against non-achievement of the KPIs"), please can you confirm what your definition of the ASC is?</p> <p>Many thanks,</p> <p>A, It would be up to your organisation to define what your annual service charges are, for example they may include but are not limited to the following,</p> <ul style="list-style-type: none"> •overhead costs, •central costs, •resource costs. <p>In your assumptions please confirm what the annual service charges are.</p>
Cassie Woods	08/06/15	<p>Q The guidance in the RF x 101 ITEP Evaluation Criteria document states in relation to question 8.3 (Practice Placements) that "bidders should aim to provide up to approx. 1000 words per option in response to this question". What are the 'options' referred to here? Placement options?</p>

Sherida Kirby	22/6/15	A Yes, The costs in the ITT of £21.79 million are whole life costs which includes the bursaries and the additional intake in 2018 if required. For the intakes in 2016 and 2017 there is £14.57 million; £7.29 million each for the intakes. This includes the amounts for the bursaries
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with other consortium members to ensure service delivery. And to act as a single contract holder and with overall accountability for the delivery of the training and meeting the contract Key Performance Indicators (KPIs)

The Training Provider(s) will be responsible for the delivery of the programme which includes but is not limited to:

- Recruitment of trainees
- Delivery and management of the training course to all trainees
- Management of trainees
- Sourcing of employers for Practice Placements

Distribution of Bursaries

Mandatory Requirements

As part of this specification there are a number of specific requirements which must be met. These can be found within the evaluation sections of REDIMO. Please note that NCTL may at its absolute discretion refuse to consider your bid further, dependent on the answers given to these requirements. The mandatory requirements for this contract are as follows:

The successful contractor (s) ("Training Providers") will need to be able to deliver a continual supply of newly qualified educational psychologists to the workforce in England until 2019-20, with an option to for an additional intake from September 18 to be completed by 2021 subject to The Secretary of State priorities. This means The Training Providers will need to:

- recruitment of 150 trainees on to ITEP in England starting in 2016 and a further intake of 150 starting in 2017
- the provision of high quality practice placements, that meet the HCPC or equivalent and professions Practice Placement Partnership Framework standards, for all ITEP NCTL funded trainees in all three years as per course requirements.
- A regional spread of training provision across the north, midlands and southern (including London) England. (see Annex 1)

NCTL may also require the recruitment and delivery of an additional intake covering the period 2018 -21 (Subject to Ministerial Approval and continued Government support and funding). Recruitment for this intake would start in the autumn of 2017, to begin training in September 2018 and finishing in August 2021. Your organisation must be able to commit to delivery of this requirement should NCTL exercise its right under the Contract to request it.

Detailed Requirements (THE SERVICES)

Section 1 - The Programme Delivery Requirement and Quantity

Recruitment and application process

Training providers are responsible for, working in partnership with the Association of Educational Psychologists (AEP) for recruiting trainees to the initial training of educational psychology programme. This takes place in the year prior to the intake starting. Recruitment should be managed in accordance with the entry requirements laid out in the [Applicant Handbook](http://www.aep.org.uk/training/)² (<http://www.aep.org.uk/training/>) and the Educational Psychology Funded Training (EPFT) scheme terms and condition. The EPFT scheme includes (amongst other factors) an expectation that funded trainees will commit to the training for a minimum period of five years (three years undertaking the course and a minimum of two years working as a qualified educational psychologist in England following completion of the course). Prior to recruitment, training providers will be given a copy EPFT scheme terms and conditions which trainees are expected to sign when they accept a funded training place.

Training providers will need to ensure that recruitment to ITEP produces diverse trainees, who have a range of

² <https://www.education.gov.uk/schools/careers/careeropportunities/b00201184/educational-psychology/training>

Contract Term

This contract will be for an initial period (Initial Term) of 60 months from 31st August 2015 (subject to agreement with DfE Ministers) to 31st August 2020, two academic year intakes with recruitment commencing September 2015 and delivery concluding July 2020 and an exit period of two calendar months at the contract end.

NCTL may also require the recruitment and delivery of an additional intake covering the period 2018 to 2021 subject to continued Government/Ministerial support and funding, plus the satisfactory delivery of the programme and its outcomes in line with agreed key performance indicators and service level agreements. Recruitment for this intake would start in September 2017 with delivery starting in September 2018 and finishing in August 2021 and bidding organisations must be able to commit to delivery of this requirement should NCTL exercise its right under the Contract to request it.

NCTL reserves the right to terminate the contract should funding be withdrawn, changed or there is a significant change in government policy relating to the programme delivery and outputs required as part of this contract, by giving three months' notice.

Funding

The anticipated maximum whole life contract cost (including any optional intake for 2018) will be up to a maximum of £21.79 million inclusive of all expenses and VAT for the three intakes. This includes all elements of the programme including Year One Bursaries. We would expect the costs to be equally proportioned across all intakes. VAT (where applicable) to be charged at the prevailing rate which at the time of the launch of this ITT is 20%.

Funding for any optional intake starting in 2018 is subject to the Secretary Of States spending priorities and therefore the NCTL is unable to commit to funding any intakes which begin after 2017 at this stage. Neither set/start-up costs or separate management costs will be paid. Bidders need to be aware that the indicative maximum funding is to cover the full whole life costs for **all elements of the programme**.

Sections 11 and 12 within the Evaluation Criteria (Item Prices/Cost Analysis) require Bidders to detail proposed whole life contract costs in order that these can be evaluated, in correlation with the Technical requirements, to compare like for like costs and ensure Best Value for Money (BVFM).

Bidders are asked to note that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations, as amended from time to time) may apply to staff employed by the incumbent supplier to deliver the current programme delivery model. Information is being sought as to the potential TUPE position, and will be distributed as and when appropriate.

Course Fees

The funding allocation for the 2016 intake must include year one, two and three course fees as stated above and year one bursary.

It is expected that course fees will include but not be limited to, course, recruitment, delivery, course management and supervision which should include overheads. Training providers will be expected to provide a full breakdown of costs in a cost schedule backed up with evidence.

Withdrawals

The expectation of the contract is to deliver qualified educational psychologists and therefore the NCTL will not continue to fund the training place of a trainee once they have withdrawn from the course. The training provider will need to manage a robust and clear deferral/ withdrawal process.

Payments for agreed deferred trainees will be held by the training provider until the candidate resumes training. DBS checks will not be funded by NCTL. Should the trainee decide to withdraw then the appropriate funding will be returned to NCTL.

Year One Bursary

NCTL funds a tax free bursary for year one for all trainees which equates to:

- £ 15,950 for non-London trainees and
- £16,390 for London trainees.

The breakdown of bursary instalments throughout the year can be flexible to meet the operational needs of the training provider. **The distribution of the year one bursary is one element of this contract.**

Bidders will need to demonstrate that they have the resource and infrastructure to distribute this bursary to their trainees. Important Note: The funding for the bursary is included in the indicative funding above. These

- A breakdown of trainee practice placements in years two and three.
- Date of completion of award for each final year trainee and post-award employment.
- latest graduation statistics and placement data.

The Training provider(s) will be required to engage in a willing and timely manner with the Initial Training Educational Psychology National Steering Group and/or one of its associated sub groups as appropriate, and government review(s) of training arrangements. The format of this engagement will be agreed at the Contract finalisation stage

Security of Data

The Training provider(s) will need to demonstrate how they will ensure data from the DfE and the NCTL as it executive body and personal data will be protected according to Schedule 10 – Data Handling of the draft contract.

Section 2- Deliver high quality training for initial training of educational psychologists.

The level of qualification, accreditation, awarding body and quality assurance

Initial training for educational psychologists should continue as a post graduate doctorate qualification gained over three years. Year one should be predominately academically focussed, with year two and three placement based with employers of educational psychologists.

Training providers must have HCPC course approval (or equivalent); prior to the 2016 intake start date, to enable graduates to be eligible to apply for HCPC registration. Trainees must be HCPC registered before being able to practice within the UK. Bidders who currently do not run an educational psychology doctorate course will not be excluded, however, they will need to demonstrate they are able to have the required course accreditation in place by the start of the first intake as above (Health and Care Professions Council, Education Department, +44 (0)845 300 6184, registration@hcpc-uk.org)

The awarding body will be the training provider, complying with the requirements of the HCPC (or equivalent) and not DfE or its Executive bodies.

Training providers must deliver high quality training supervision and support to trainees according to HCPC or equivalent requirements.

Training providers must describe and evidence their quality assurance proposals to ensure the requirements of contract are delivered.

Section 3 - Allocation and the distribution of training courses and providers across England

The provision of training will be in England only

Currently there is provision in the North, Midlands, and the South (including London) in England. This tender is looking to maintain some provision in these three regions

The number of places funded per training provider/ consortia will be dependent on the proposed whole life contract costs of the successful Bidder(s) within their bids and the available funding for training (see Section 1 Funding). However there is an expectation that the contract should deliver two intakes/intakes of 150 qualified educational psychologists each plus the provision to extend for a third intake of 150 funded places as set out under Funding above. Funding for the optional intake starting in 2018 is subject to the Secretary Of States spending priorities and therefore the NCTL is unable to commit to funding any intakes which begin after 2017 at this stage. Neither set/start-up costs or separate management costs will be paid.

In the interest of gaining maximum value for money, the NCTL in line with government policy³ is keen to let the market dictate where the courses should be allocated, however it is desirable that there is still some regional coverage.

This will be achieved by aiming for a minimum number of places on the following basis, 20 places in the North,

³ <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpubacc/650/65003.htm>

- Commence the delivery of the second year of the programme to the 2017 intake in September 2017;
- Have outline plans in place for the subsequent recruitment and delivery rounds to an additional intake from September 2018 to August 2021 should NCTL exercise its right under the Contract to request

Bidders should submit a project implementation plan that outlines their plans and any key dependencies.

NCTL reserves the right to terminate the contract should funding be withdrawn, changed or there is a significant change in government policy relating to the programme delivery and outputs required as part of this contract, by giving three months' notice

Section 8 - Data Handling

The Data Handling schedule for this requirement is set out in the Draft Contract – Schedule 10.

Attachments

The following attachments should be read in conjunction with this Requirement:

- Evaluation criteria
- Draft contract
- Instructions to Bidders
- Appendix 2 - Cost matrix
- Appendix 3 - Trainees Terms and Conditions (Funding Contract)
- Appendix 4 - Definition of Northern, Midland and Southern England

These can be downloaded via REDIMO (*my tenders –reference – view full notice including documentation*).

Evaluation Process and criteria

All bids received will be evaluated against the evaluation criteria and scoring methodology as stated within this Requirement and REDIMO. Please see the attached document for further information.

Timelines

Deadline for completing all evaluation sections in relation to this requirement	11.00 pm 22nd June 2015
Anticipated Notification to Bidders of result (via email)	20 th July 2015 subject to the agreement of DfE Ministers
Anticipated Contract start date	1 September 2015 subject to the agreement of DfE Ministers
Anticipated Contract expiry date	31 August 2020 subject to the agreement of DfE Ministers

Terms and Conditions

A copy of the draft terms and conditions of the contract can be found in REDIMO (*my tenders – RD – view full notice including documentation*). A final version of the contract will be issued to the successful Bidder.

Clarifications relating to terms and conditions can be requested through REDIMO by raising a clarification question at any time during the bidding process. Any proposed deviations from the terms and conditions must be raised at the bidding stage. However, Bidders should note that only minor changes to the contract which do not increase NCTL's level of risk will be considered.

Queries and Guidance

Appendix 8 Monthly Reporting Template

PROVIDER HIGHLIGHT REPORT																											
Purpose: To ensure that all contractor activity on track and performance monitored.																											
Agency	NCTL	Provider																									
Reporting Period		Completed by																									
Project	Initial Training For Educational Psychologists	Current Status		Green	Previous Report Status		Green																				
Status																											
Green		Progressing according to plan. There is a good likelihood that actions taken will achieve the outcome																									
Amber		Mixed position – some actions are good and on track but others require attention																									
Red		No progress and in the wrong direction – requires urgent and decisive action.																									
Delivery Activities		Update/ Progress																									
1. Delivery of Training for Cohorts		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">Cohort</td> <td style="width: 10%;">Starters</td> <td style="width: 10%;">Graduands/ graduates</td> <td style="width: 10%;">Withdrawals</td> <td style="width: 10%;">Deferrals (interrupters)</td> <td style="width: 10%;">Late (registered)</td> <td style="width: 10%;">Name added to HCPC passlist</td> <td colspan="2"></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td colspan="2"></td> </tr> </table>								Cohort	Starters	Graduands/ graduates	Withdrawals	Deferrals (interrupters)	Late (registered)	Name added to HCPC passlist											
		Cohort	Starters	Graduands/ graduates	Withdrawals	Deferrals (interrupters)	Late (registered)	Name added to HCPC passlist																			
Ongoing								Green																			

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