DATED

THE INSTITUTE FOR APPRENTICESHIPS AND TECHNICAL EDUCATION

and

[SUPPLIER]

CONTRACT FOR THE PROVISION OF SERVICES IN RELATION TO THE [xxx] T LEVEL TECHNICAL QUALIFICATION

[***DN: The highlighted details above are to be completed at the Contract award stage***]

Contents

1 Contract start, formation and interpretation 1

2 Appointment and exclusivity 2

3 How the Services must be supplied 3

4 Pricing and payments 5

5 Developing the TQ and achieving IfATE Approval and Accreditation 8

6 Operating the TQ 16

7 Interaction with Providers 17

8 TQ Changes 20

9 Record keeping, monitoring and reporting 23

10 Supplier Staff and Subcontracting 24

11 Rights and protection 25

12 Intellectual Property Rights 26

13 What may happen if there are issues with your provision of the Services 31

14 Ending or extending this Contract 35

15 How much each Party can be held responsible for 38

16 Insurance 39

17 Data protection and information 40

18 What must be kept confidential 41

19 When information can be shared 44

20 Invalid parts of this Contract 45

21 No other terms apply 45

22 Other people's rights in this Contract 45

23 Circumstances beyond either Party's control 46

24 Relationships created by this Contract 46

25 Giving up contract rights 46

26 Transferring responsibilities 46

27 Changing this Contract 47

28 How to communicate about this Contract 49

29 Dealing with claims 49

30 Preventing fraud, bribery and corruption 50

31 Equality, diversity, human rights and anti-slavery 52

32 Health and safety 52

33 Environment 53

34 Tax 53

35 Conflict of interest 53

36 Reporting a breach of this Contract 54

37 Resolving disputes 54

38 Which law applies 55

Schedule 1 56
Definitions and Interpretation 56

Schedule 2 96
Service Requirements 96

Schedule 3 97
Implementation 97

Schedule 4 98
Co-operation 98

Schedule 5 102
Supplier’s Response 102

Schedule 6 103
Pricing Schedule 103

Schedule 7 104
Staff (including Key Personnel) 104

Schedule 8 110
Supply Chain (including approved Subcontractors) 110

Schedule 9 113
Data Handling and Security Management 113

Schedule 10 118
Business Continuity 118

Schedule 11 119
Change Management 119

Schedule 12 120
Exit Management 120
PART A: GENERAL 120
PART B: EMPLOYMENT 127

Schedule 13 132
Form of Guarantee 132

Schedule 14 150
Form of Assignment and Licence 150

Schedule 15 176
Monitoring of Performance 176

Schedule 16 191
Logos and Trademarks – T Level Trade Mark Licence 191

Schedule 17 206
Provider Contract requirements 206

Schedule 18 210
Commercially Sensitive Information 210

Schedule 19 211
Required Insurances 211

Schedule 20 214
Authorised Representatives 214

THIS CONTRACT is made on [

BETWEEN:

(1) **THE INSTITUTE FOR APPRENTICESHIPS AND TECHNICAL EDUCATION** of Level 1, 151 Buckingham Palace Road, London SW1W 9SZ ("**Authority**"); and

(2) **[SUPPLIER NAME]**, a company registered in England and Wales (company registration number: [*insert number*]), whose registered office is at [*insert address*] ("**Supplier**"),

each a "**Party**" and together the "**Parties**".

BACKGROUND TO THIS CONTRACT:

(A) On [*insert date*] the Authority advertised in the Official Journal of the European Union (reference [*insert PIN number*]) inviting prospective suppliers to submit proposals for the design, development and delivery of the technical education qualification element for the [*insert relevant pathway*] T Level.

(B) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier of the TQ.

(C) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

OPERATIVE TERMS:

1 Contract start, formation and interpretation

1.1 This Contract is legally binding from the Effective Date until it ends in accordance with clause 14 (*Ending or extending this Contract*).

1.2 This Contract is formed by the Core Terms and the Schedules and the Supplier must comply with all of its obligations set out in both the Core Terms and the Schedules, provided always that in the event of any conflict between the provisions of the Core Terms and the Schedules and/or the Annexes, or between any of the Schedules and/or the Annexes, the conflict shall be resolved according to the following descending order of priority:

1.2.1 the Core Terms, Schedule 1 (*Definitions and Interpretation*), and Schedule 6 (*Pricing Schedule*);

1.2.2 Schedule 2 (*Service Requirements*), Schedule 4 (*Co-operation*) and their respective Annexes; and

1.2.3 the remaining Schedules and their respective Annexes.

1.3 The Parties shall interpret this Contract using Schedule 1 (*Definitions and Interpretation*).

1.4 Where Schedule 1 (*Definitions and Interpretation*) includes an entity defined as the Guarantor, then:

1.4.1 save for clauses 1.3, 15 (*How much each Party can be held responsible for*), 18 (*What must be kept confidential*), 19 (*When information can be shared*), 20 (*Invalid parts of this Contract*), 21 (*No other terms apply*), 22 (*Other people's rights in this Contract*), 24 (*Relationships created by this Contract*), 25 (*Giving up contract rights*), 28 (*How to communicate about this Contract*), 37 (*Resolving disputes*), and 38 (*Which law applies*), this Contract is conditional upon the valid execution by the Guarantor and delivery to the Authority of the Guarantee (the "**Condition Precedent**");

1.4.2 the Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible; and

1.4.3 in the event that the Condition Precedent is not satisfied within 10 Working Days of the Effective Date (or such other period as is agreed in advance in writing with the Authority), this Contract shall automatically cease and shall not come into effect and neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

2 <u>Appointment and exclusivity</u>

2.1 The Authority hereby appoints the Supplier as the provider of the Services in relation to the TQ during the Term.

2.2 As part of such appointment, the Supplier has the exclusive right to offer the TQ in England to Students for TQ courses for the Cohort for the Academic Years commencing at each of 1 August 2023, 1 August 2024, 1 August 2025, 1 August 2026]

and, where the Authority gives written notice to the Supplier to extend this Contract pursuant to clause 14.2 (*Ending or extending this Contract*), [1 August 2027] inclusive (each an "**Exclusive Cohort**").

2.3 Subject to the Supplier's compliance with the provisions of this Contract, the Authority shall not, during the Term, authorise any third party to provide goods and/or services equivalent to the Services in relation to the whole or any part of an Exclusive Cohort.

2.4 The Supplier acknowledges and agrees that during the Term the Authority may, subject to clause 2.3, authorise a third party to provide goods and/or services equivalent to the Services in relation to the TQ in England to students in cohorts outside the Exclusive Cohort, notwithstanding the continuation of the Services under this Contract in respect of any Exclusive Cohort.

2.5 The Supplier shall, subject to clause 14 (*Ending or extending this Contract*), be responsible for providing the Services to Students who are within an Exclusive Cohort until the later of the end of their TQ and 2 years following the end of the final Academic Year of the TQ for the Exclusive Cohort of which such Student was part.

2.6 Unless otherwise agreed with the Authority in writing, the TQ shall be offered by the Supplier on the basis that teaching of the TQ by Providers for each Exclusive Cohort will commence in September of the relevant Academic Year (accepting that Students may, subject to applicable Supplier and Provider rules, commence their study of the relevant TQ later than the teaching commencement date).

3 <u>How the Services must be supplied</u>

3.1 The Supplier must provide the Services:

3.1.1 in full compliance with the Service Requirements and the Supplier's Response, provided always that:

(i) the fact that the Supplier has complied with the Supplier's Response shall not limit the Supplier's obligation to satisfy the Service Requirements; and

(ii) the fact that the Supplier has satisfied the Service Requirements shall not limit the Supplier's obligation to comply with the Supplier's Response;

3.1.2 to a professional standard;

3.1.3 with reasonable skill and care;

3.1.4 using Good Industry Practice;

3.1.5 in accordance with its own policies, processes and quality control measures to the extent that these do not conflict with this Contract;

3.1.6 in accordance with any agreed timings set out in this Contract;

3.1.7 in accordance with Law;

3.1.8 subject to clause 5.14.3 (*Developing the TQ and achieving IfATE Approval and Accreditation*), in accordance with the Conditions of Recognition;

3.1.9 in a manner that ensures that neither it, nor any of the Supplier Staff:

(i) brings the Authority, the Department or the ESFA into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in any or all of them; and/or

(ii) engages in any act or omission which is reasonably likely to bring the T Levels Programme into disrepute,

in either case, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract; and

3.1.10 in accordance with (and in a manner consistent with enabling the Supplier and the T Level Awarding Organisations to achieve the aims set out in) Schedule 4 (*Co-operation*).

3.2 The Supplier must:

3.2.1 co-operate and, where appropriate, consult with the Stakeholders and the Authority's third party suppliers on all aspects connected with the delivery of the Services; and

3.2.2 ensure that Supplier Staff comply with any reasonable instructions of the Authority in relation to the Services.

Ofqual Recognition

3.3 The Supplier must have in place from the Effective Date and maintain throughout the Term, Ofqual Recognition, unless the Authority requests the Supplier to withdraw its Ofqual Recognition under clause 5.14.3 (*Developing the TQ and achieving IfATE Approval and Accreditation*).

3.4 The Supplier must, subject to clause 5.14.3 (*Developing the TQ and achieving IfATE Approval and Accreditation*), comply with each Condition of Recognition throughout the Term.

Impact of approval by the Authority

3.5 The Supplier agrees and accepts that except for confirmation of a Variation pursuant to clause 27 (*Changing this Contract*), which expressly changes the Supplier's obligations or liabilities or the Authority's rights under this Contract, no review, comment, authorisation to proceed (as contemplated by clause 5.12.1) or approval by the Authority (including any IfATE Approval) in connection with any Product and/or Service (including in respect of the Supplier's Response, the Implementation Plan, the Resource Plan and any documents or information submitted by the Supplier in order to obtain IfATE Approval) shall operate to exclude or limit the Supplier's obligations or liabilities or the Authority's rights under this Contract, and:

3.5.1 the Supplier retains sole responsibility for ensuring that the TQ (including the Products and Services) meets and continues to meet all relevant Service Requirements (as they may be amended from time to time in accordance with this Contract) throughout the Term; and

3.5.2 the Supplier acknowledges and accepts that any review, comment, authorisation to proceed or approval (including any IfATE Approval) do not constitute or imply any warranty from the Authority or Ofqual in respect of the TQ.

4 <u>Pricing and payments</u>

4.1 In exchange for the provision of the Services (including the supply of the Products), the Supplier must invoice:

4.1.1 the Authority for the relevant Charges, which, in the case of:

(i) the Development Charge, shall be invoiced by the Supplier at the time and in the manner set out in clauses 5.12.1(ii), 5.14.1(ii) or 5.14.3(ii) (*Developing the TQ and achieving IfATE Approval and Accreditation*) (as applicable));

(ii) that part of the Charges referred to in limb (b) of the definition of Charges, shall, unless otherwise agreed by the Authority, be invoiced by the Supplier on IfATE Approval of the relevant TQ Change; and

(iii) that part of the Charges referred to in limb (c) of the definition of Charges, shall be invoiced by the Supplier as set out in the relevant Variation; and

4.1.2 the Approved Providers for the Fees pursuant to the applicable Provider Contract.

4.2 The Supplier acknowledges and agrees that:

4.2.1 in no circumstances shall the Authority, the Department or ESFA have any liability to the Supplier in respect of the Fees. The Authority is not liable if any Provider (or other third party) fails to pay any fees or other costs (including the Fees) due from them to the Supplier; and

4.2.2 save as permitted by the relevant Provider Contract, the Supplier shall not be entitled to levy any costs and/or charges and/or require any further and/or additional payment in respect of the provision of the Services (including the supply of any Products) to any Approved Provider (and/or any Student) other than the Fees.

4.3 All Fees and Charges:

4.3.1 exclude VAT, which is payable on provision of a valid VAT invoice to the applicable payor; and

4.3.2 include all costs payable by the Authority and/or any Provider (as the case may be) in connection with the Services (including the supply of the Products).

4.4 The Authority must pay the Supplier:

4.4.1 in respect of the Development Charge, the relevant Interim Milestone Payment or the Final Milestone Payment (as the case may be); or

4.4.2 in respect of any other Charges arising under clause 8 (*TQ Changes*) or clause 27 (*Changing this Contract*), the amount of any such Charges due under such clause 8 (*TQ Changes*) or clause 27 (*Changing this Contract*),

in each case, within 30 days of receipt by the Authority of a valid, undisputed invoice, in cleared funds to the account as notified by the Supplier to the Authority.

4.5 A Supplier invoice is only valid if it includes this Contract reference and purchase order number (if any) and other details reasonably requested by the Authority.

4.6 If there is a Dispute between the Parties as to the amount invoiced by the Supplier to the Authority, the Authority must pay the undisputed amount. The Supplier cannot suspend the provision of the Services (including the supply of the Products) unless the Supplier is entitled to terminate this Contract for a failure to pay undisputed sums in accordance with clause 14.5 (*When the Supplier can end this Contract*). Any disputed amounts shall be resolved through the Dispute Resolution Procedure.

4.7 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

4.8 The Supplier can issue a written Reminder Notice to the Authority (in accordance with clauses 28.1 and 28.2 (*How to communicate about this Contract*)) if the Authority does not pay an undisputed invoice on time.

4.9 The Authority may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.

4.10 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the Authority can publish the details of the late payment or non-payment. The Supplier must also ensure that any Sub-Contract it enters into contains provisions which have the same effect as clauses 4.4, 4.6, 4.7 and this clause 4.10.

4.11 The Supplier has no right of set-off, counterclaim, discount or abatement unless a court orders this.

Indexation of Fees and Rate Card rates

4.12 The Supplier shall be entitled to adjust the Fees and the Rate Card rates which apply in respect of any Academic Year following the Academic Year in which the TQ is launched in accordance with the provisions of clause 4.13 to reflect the impact of inflation.

4.13 Where the Supplier wishes to adjust the Fees and/or Rate Card rates in accordance with clause 4.12:

4.13.1 the Supplier shall notify the Authority in writing of the proposed percentage adjustment in the existing Fees and/or Rate Card rates and the resulting new Fees and/or Rate Card rates by the end of February in the Academic Year prior to the Academic Year in respect of which the adjustment is to apply ("**Calculation Date**");

4.13.2 the proposed percentage adjustment to the relevant then current Fees or Rate Card rates must be no greater than the percentage increase in the preceding 12 months of the UK Consumer Price Index most recently published by the UK Office of National Statistics prior to the Calculation Date; and

4.13.3 the proposed adjustment calculated in accordance with this clause 4.13 shall not operate to adjust the Fees or Rate Card rates for the then current Academic Year, but shall operate to adjust the Fees or Rate Card rates as applicable with effect from the immediately following Academic Year.

4.14 Except as set out in clause 4.13, neither the Charges, the Fees nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Subcontractors of the performance of their obligations under this Contract.

5 Developing the TQ and achieving IfATE Approval and Accreditation

5.1 The Supplier shall develop the TQ to meet the Service Requirements and in accordance with the terms of this Contract.

Requirement for IfATE Approval

5.2 The Supplier acknowledges and accepts that:

5.2.1 the Supplier shall not make the whole or any part of the Initial TQ Deliverables available to Eligible Providers and/or Approved Providers for delivery to Students until IfATE Approval has been granted; and

5.2.2 the Supplier shall, where possible, (and in each case with the prior written consent of the Authority) share draft versions of the Initial TQ Deliverables with Eligible Providers and/or Approved Providers to support their preparations to deliver the TQ.

General development obligations

5.3 The Supplier must:

5.3.1 design and develop the TQ in accordance with paragraphs 2.1 and 2.2 of Part 1 of the Service Requirements and in order to meet the Milestones;

5.3.2 consult with:

(i) the Authority, the Department, ESFA and the Route Panels; and

(ii) a representative sample of Providers and Employers,

in the design and development of the TQ (including as contemplated by paragraph 2.1.4 of the Service Requirements);

5.3.3 take into account any input received from T Level Panels in the design and development of the TQ, and consult as appropriate with the T Level Panels prior to the first Interim Milestone;

5.3.4 co-operate (as required) and work collaboratively with the Authority to achieve IfATE Approval of the TQ;

5.3.5 take appropriate steps to meet the requirements of Ofqual and respond to the feedback provided following the Interim Milestones in each case as necessary to achieve Accreditation of the TQ;

5.3.6 take into account the Technical Qualifications Explanatory Note together with any guidance as issued by the Authority from time to time in the design

and development of the TQ, and provide input when reasonably requested by the Authority to support the development and updating of such Technical Qualifications Explanatory Note; and

5.3.7 submit to the Authority an updated Implementation Plan and Resource Plan within 5 Working Days from the Effective Date.

Development support from the Authority

5.4 The Supplier Authorised Representative and/or senior representatives of the Supplier's development team as appropriate will meet monthly (or more frequently if deemed necessary by the Authority) with the Authority Authorised Representative and representatives of the Authority's Technical Education Programme Team, at a time and location to be advised by the Authority, following the Effective Date until IfATE Approval of the TQ (each a "**TQ Development Meeting**") to review progress on TQ development, address key risks and identify solutions to any barriers to progress. The Authority shall issue an agenda in advance of each TQ Development Meeting. In the event that the development of the TQ is materially delayed against the Milestones and/or the dates given in the Implementation Plan, on a written request by the Authority the Supplier's Chief Executive Officer or an equivalently senior individual shall attend the next TQ Development Meeting.

5.5 The Supplier shall:

5.5.1 not less than 5 Working Days prior to each TQ Development Meeting, submit the Development Phase Report to the Authority in respect of the relevant month, together with, without prejudice to paragraph 2.5 of Part 1 of the Service Requirements:

(i) updated versions (meeting all of the requirements of the relevant Product Description) of the following Products:

(A) the Implementation Plan;

(B) the Resource Plan;

(C) the Risk Register; and

(D) the Issues Log; and

(ii) as requested by the Authority from time to time, the then current versions of the following:

(A) the TQ Specification;

(B) the Assessment Strategy;

(C) the TQ Specimen Assessment Materials;

(D) the Guide Standard Exemplification Materials;

(E) the Provider Approval Criteria;

(F) the Submission Issues Log; and

(G) any draft version of the Key Dates Schedule that the Supplier intends shall (if Approved) become the Key Dates Schedule for the purposes of this Contract from time to time,

it being understood that the Supplier will not be in breach of this clause 5.5.1 if the relevant item is still being developed and the Milestone for its completion has not been reached as at the date of the relevant TQ Development Meeting; and

5.5.2 provide a verbal summary at each such TQ Development Meeting of the progress of development of the TQ as against the Implementation Plan and Resource Plan and any identified risks to the on time delivery of the TQ and proposed resolutions.

5.6 The Authority shall provide minutes setting out an accurate summary of each such TQ Development Meeting within 5 Working Days of each such meeting.

Submission process

5.7 The Supplier shall, on or prior to the applicable Submission Date, make all Submissions to the Authority necessary in respect of IfATE Approval and/or Accreditation in accordance with paragraphs 2.1 and 2.2 of Part 1 and Annex 7 to the Service Requirements.

5.8 The Supplier shall ensure that all Submissions made in accordance with clause 5.7 meet all of the requirements for each Submission as set out in paragraph 2.1 of Part 1 and Annex 7 to the Service Requirements. Unless notified otherwise by the Authority in writing, the Supplier shall continue its ongoing work in relation to the Initial TQ Deliverables following each Submission whilst such Submission is being considered by the Authority and/or Ofqual. For the avoidance of doubt, this means that the Supplier, following each Submission for each Interim Milestone, shall not await notification from the Authority in accordance with Clause **Error! Reference source not found.** below before continuing work on the Initial TQ Deliverables required for any subsequent Milestone.

5.9 The Authority shall submit (and where relevant, re-submit) the relevant documentation and/or information required for Accreditation to Ofqual on the Supplier's behalf.

5.10 The Supplier shall respond promptly to the Authority to any requests from the Authority for further information to support any Submission and/or the IfATE Approval or Accreditation process.

5.11 The Supplier shall not contact Ofqual directly in relation to Accreditation of the TQ unless instructed to do so by the Authority or Ofqual.

5.12 In respect of each Interim Milestone, the Authority and, if relevant, Ofqual will consider each Submission made in accordance with clause 5.7 and 5.8 and, within a timeframe which should allow the TQ to be developed in time for delivery in accordance with this Contract:

5.12.1 if the Authority considers that the Submission (or Re-Submission (as the case may be)) meets all of the requirements of paragraphs 2.1 and 2.2 of Part 1 and Annex 7 to the Service Requirements for the relevant Interim Milestone, the Authority shall:

(i) confirm in writing to the Supplier that such requirements have been met; and

(ii) where the relevant Interim Milestone attracts an Interim Milestone Payment, pay to the Supplier (in accordance with clause 4 (*Pricing and payments*)) the applicable Interim Milestone Payment; or

5.12.2 if (1) the Authority does not consider that the Submission (or Re-Submission (as the case may be)) meets all of the requirements of paragraphs 2.1 and 2.2 of Part 1 and Annex 7 to the Service Requirements for the relevant Interim Milestone and/or (2) the Supplier has outstanding issues still to be addressed / additional information still to be provided in relation to any previous Interim Milestones (including in relation to any previous Interim Milestones that do not attract an Interim Milestone Payment), the Authority may withhold payment to the Supplier of the applicable Interim Milestone Payment (if any) and shall:

(i) notify the Supplier of the issues that need to be addressed and/or the additional information that needs to be provided (and, acting reasonably, the date by which such issues need to be addressed and/or such information needs to be provided) and whether the Authority will be withholding payment of the applicable Interim Milestone Payment (if any), and the Supplier shall promptly address such issues and resubmit the relevant documentation and/or provide such additional information (a "**Re-Submission**") to the Authority on or prior to the date notified by the Authority, following which clause 5.12.1 or this clause 5.12.2 will apply to such Re-Submission; or

(ii) notify the Supplier:

(A) that notwithstanding the failure of the Submission (or Re-Submission (as the case may be)) to meet all of the requirements of paragraphs 2.1 and 2.2 of Part 1 and Annex 7 to the Service Requirements for the relevant Interim Milestone, the Supplier shall continue with the design and development of the TQ without having to make a Re-Submission, provided that the relevant issues are addressed by any timescales specified by the Authority and in any event no later than by the Final Approval Milestone Date; and

(B) whether the Authority will be withholding payment of the applicable Interim Milestone Payment (if any), following which the Supplier shall promptly address the issues

identified / further information required, as part of its ongoing development of the TQ in accordance with the timescales specified by the Authority. If the Authority is withholding payment of any applicable Interim Milestone Payment, subject to the Supplier having addressed the issues identified in accordance with the required timescales (and in any event no later than by the Final Approval Milestone Date), clause 5.12.1(ii) will apply.

5.13 The Supplier acknowledges and agrees that owing to the meeting dates scheduled for the IfATE Approval and Accreditation processes, any delay in making the Final Submission to the Authority by the Final Approval Milestone Date may cause a delay of several weeks for IfATE Approval. Accordingly, failure by the Supplier to make the Final Submission in accordance with clause 5.7 and/or 5.8 by the Final Approval Milestone Date, other than due to a breach of this Contract by the Authority, shall be a Critical Service Failure.

5.14 In respect of the Final Approval Milestone, the Authority and Ofqual will consider the Final Submission made by the Supplier in accordance with clause 5.7 and 5.8 and, within a timeframe which should allow the TQ to be developed in time for delivery in accordance with this Contract:

5.14.1 if the Authority considers that the Final Submission (or Final Re-Submission (as the case may be)) meets the requirements for IfATE Approval, then the Authority shall:

(i) confirm to the Supplier in writing that the TQ has IfATE Approval and that, subject (if applicable) to clause 7.2 (*Interaction with* Providers) and clause 13.3.1 (*What may happen if there are issues with your provision of the Services*), the Supplier is authorised to proceed to make the TQ available to Approved Providers for delivery to Students in accordance with clause 6 (*Operating the TQ*); and

(ii) pay to the Supplier (in accordance with clause 4 (*Pricing and payments*)) the Final Milestone Payment, together with any outstanding Interim Milestone Payments;

5.14.2 if the Authority considers that the Final Submission (or Final Re-Submission (as the case may be)) does not meet the requirements for IfATE Approval, then the Authority shall notify the Supplier in writing of the issues that need to be addressed and/or the additional information that needs to be provided and the Supplier shall within 10 Working Days (or such longer timeframe as is agreed in writing by the Authority) address such issues and resubmit the relevant documentation and/or provide such additional information, following which this clause 5.14 will apply to such Final Re-Submission; or

5.14.3 in exceptional circumstances (and noting that the shared intent of the Parties is to ensure that the TQ achieves Accreditation and that a TQ will not receive IfATE Approval without first achieving Accreditation), the Authority may, at its sole discretion, determine that the Final Submission (or Final Re-Submission (as the case may be)) meets the requirements for IfATE Approval notwithstanding the fact that Ofqual does not consider that the Final Submission (or Final Re-Submission (as the case may be)) meets the requirements for Accreditation, and in such event the Authority shall notify the Supplier in writing of such determination, and following such notification:

(i) the Supplier is, subject to clause 7.2 (*Interaction with Providers*) and clause 13.3.1 (*What may happen if there are issues with your provision of the Services*), authorised to proceed to make the TQ available to Approved Providers for delivery to Students in accordance with clause 6 (*Operating the TQ*);

(ii) the Authority shall pay to the Supplier (in accordance with clause 4 (*Pricing and payments*)) the Final Milestone Payment, together with any outstanding Interim Milestone Payments;

(iii) the Supplier shall promptly apply to Ofqual to withdraw its Ofqual Recognition in respect of the TQ and the TQ shall not be regulated by Ofqual;

(iv) the Supplier's obligation under this Contract to meet and comply with the Conditions of Recognition shall cease to apply;

(v) the requirements on the Supplier in this Contract:

(A) to maintain Ofqual Recognition in respect of the TQ; and/or

(B) to meet the relevant requirements of Accreditation which were not met by the Final Submission or Final Re-Submission (as the case may be) pursuant to this clause 5,

shall then cease to apply; and

(vi) the provisions of clause 37.7 (*Resolving disputes*) and paragraph 1.6 of Part 1 of the Service Requirements shall be deemed to be deleted.

5.15 If the Supplier wishes to appeal any decision taken by the Authority in relation to IfATE Approval, the Supplier must comply with the Authority Procedural Review process where it applies.

5.16 The Supplier acknowledges and accepts that the Authority will share, as it deems necessary, with Ofqual, the Department, ESFA, and the Route Panel:

5.16.1 all Submissions (including any Final Submission) and/or Re-Submissions (including any Final Re-Submissions) submitted by the Supplier under clause 5.7 and/or clause 5.14;

5.16.2 any information required by the Authority pursuant to clause 5.10;

5.16.3 any information required by Ofqual for the Regulation of the TQ or to perform the statutory functions of Ofqual; and/or

5.16.4 any other information it holds in relation to the Supplier,

and the provisions of clause 18 (*What must be kept confidential*) will not prevent any disclosure or sharing of documentation and/or information by the Authority under this clause 5.16.

6 <u>Operating the TQ</u>

6.1 Following IfATE Approval and, subject to clause 5.14.3 (*Submission process*), Accreditation of the TQ, the Supplier must (subject to clause 7.2 (*Interaction with Providers*) and clause 13.3.1 (*What may happen if there are issues with your provision*

of the Services)) make the TQ (including (as applicable) the Products) available to Approved Providers for delivery to Students and provide the Services (other than the Initial Development Services) in accordance with the Service Requirements.

6.2 The Supplier shall meet all KPIs in the delivery of the Services (other than the Initial Development Services).

6.3 The Supplier must comply with the current version of any Key Dates Schedule in respect of the making available of the TQ and the performance of the Services (other than the Initial Development Services).

6.4 The Supplier must provide materials and Student Information to the Authority in accordance with paragraphs 5, 8 and 10 of Part 1 of the Service Requirements to enable the Authority to keep a record in the event such materials and/or information is required for the transfer of Services to a Replacement Supplier.

6.5 The Supplier shall promptly provide to the Authority such materials relating to the TQ and Student Information as are requested in writing by the Authority to enable work by or on behalf of the Authority and/or Ofqual to ensure the ongoing maintenance between Cohorts of the grades and standards of the TQ and the wider T Level Programme.

6.6 The Supplier shall actively promote the TQ to Eligible Providers.

7 Interaction with Providers

7.1 The Supplier shall, in accordance with the requirements set out in paragraph 3 of Part 1 of the Service Requirements, operate a procedure to receive applications for Provider Approval from Eligible Providers that wish to make the TQ available to Students, and where the relevant Provider Approval Criteria are met to grant Provider Approval and notify the Approved Providers accordingly. The Supplier acknowledges and agrees that:

7.1.1 it shall not be entitled or permitted to:

(i) charge any additional costs, charges and/or fees arising out of or in connection with the implementation and operation of such procedure and/or the granting of Provider Approval; and/or

(ii) impose any additional requirements (other than a Provider Contract) on any Eligible Provider and/or Approved Provider (as applicable)

as a condition to and/or consequence of the grant of Provider Approval;

7.1.2 only an Eligible Provider shall be eligible to be granted Provider Approval by the Supplier in respect of the TQ; and

7.1.3 subject to clause 7.1.2 and without prejudice to paragraph 3.1.1 of Part 1 of the Service Requirements, the Supplier shall promptly grant Provider Approval to Eligible Providers who meet the Provider Approval Criteria following receipt of their application for Provider Approval.

7.2 The Supplier shall review and assess Approved Providers on an ongoing basis in accordance with paragraph 3.1.2 of Part 1 of the Service Requirements to ensure that they continue to meet the requirements for Provider Approval to make the TQ available to Students and, subject to the provisions of paragraphs 3.2 to 3.5 (inclusive) of Part 1 of the Service Requirements, where an Approved Provider no longer meets the Provider Approval Criteria, the Supplier shall revoke such Provider Approval.

7.3 The Supplier shall ensure that:

7.3.1 prior to any Eligible Provider making the TQ available to Students:

(i) the Eligible Provider is an Approved Provider;

(ii) a binding Provider Contract is in place with the relevant Approved Provider; and

7.3.2 the Provider Services shall only be provided to an Approved Provider during the term of, and subject to the provisions of, the applicable Provider Contract.

7.4 Without prejudice to paragraph 5 of Part 1 of the Service Requirements, the Supplier shall promptly register a Student for the TQ following receipt by the Supplier of an application for registration of that Student from an Approved Provider.

7.5 The Supplier shall, on written request by the Authority, promptly provide a copy of each Provider Contract to the Authority and to the ESFA.

7.6 The Supplier shall retain copies of all documentation and information in relation to arrangements with Eligible Providers and Approved Providers, including all such documentation and/or information arising out of or in connection with:

7.6.1 the application for and/or the grant of Provider Approval referred to in clause 7.1; and

7.6.2 the ongoing monitoring of Approved Providers by the Supplier referred to in clause 7.2,

and without prejudice to the generality of the definition of IfATE Data, such documentation and information shall form part of the IfATE Data to which the provisions of clause 17 (*Data protection and information*) shall apply.

7.7 The Supplier shall make available the Additional Services and provide the Additional Services on request by Approved Providers in accordance with paragraphs 5, 6, and 9 of Part 1 of the Service Requirements.

7.8 The Supplier shall be permitted to offer and provide additional products and/or services in each case related to the TQ to Approved Providers (and Students), provided always that:

7.8.1 such additional products and services are not identical to, or performing an equivalent function in relation to the TQ to, the whole or any part of the Products and/or the Services (including the Additional Services) and offered and/or provided on alternative terms and/or conditions (including as to timing or quality) to those terms and conditions which would apply pursuant to this Contract to the applicable Products and/or Services;

7.8.2 without prejudice to clause 7.1.1(ii) and the requirements of Schedule 17 (*Provider Contract Requirements*), the Supplier shall not, other than the Provider Contract, impose any condition on any Eligible Provider (including any Approved Provider) and/or Student to purchase such additional products and/or services as a condition to and/or consequence of:

(i) the grant of any Provider Approval; and/or

(ii) the proper performance of any of the Services (and/or the supply of any Products); and

7.8.3 the Supplier shall not (in making available such products and/or services available and/or in respect of the terms on which such products and/or services are made available) favour one Provider and/or group of Providers or one Student and/or group of Students over another.

7.9 The Supplier shall comply with Schedule 17 (*Provider Contract Requirements*) in respect of its contracts with Approved Providers in relation to the TQ.

8 TQ Changes

8.1 The Supplier acknowledges and agrees that the Authority may publish revised Outline Content from time to time.

8.2 The Supplier must ensure that the Approved Initial TQ Deliverables reflect the version of the Outline Content as at the Effective Date ("**Initial Content Date**").

8.3 The Supplier must make any TQ Change reasonably requested by the Authority to reflect any changes to the Outline Content following the Initial Content Date subject to the terms of this clause 8.

8.4 The Authority may carry out annual reviews in each Academic Year where a new Cohort is commencing the TQ in the following Academic Year to identify any potential TQ Changes required by the Authority, including any TQ Changes arising as a result of updates to the Outline Content. The Authority may prepare and submit to the Supplier by the relevant dates prescribed by the TQ Content Updating Schedule in each such Academic Year up to two annual guidance notes setting out the output of the Authority's reviews in relation to Inclusive TQ Changes and Exclusive TQ Changes respectively. Where the Authority identifies any potential TQ Change (in an annual guidance note or otherwise), the Authority shall promptly notify the Supplier in writing of details of the potential TQ Change.

8.5 Without prejudice to paragraphs 2.5 and 2.6 of Part 1 of the Service Requirements which shall apply in addition to any annual review, the Supplier shall carry out an annual review of the TQ once in each Academic Year, taking into account the output of any Authority annual guidance note(s) pursuant to clause 8.4 and any additional updates the Supplier has proposed to the TQ (to the extent that such updates have not otherwise been Approved pursuant to paragraph 2.5 or 2.6 of Part 1 of the Service Requirements), to identify any potential TQ Changes required to ensure ongoing compliance of the TQ with the Service Requirements. Where the Supplier identifies

any potential TQ Change, the Supplier shall promptly notify the Authority in writing of details of the potential TQ Change.

8.6 Where a TQ Change is an Exclusive TQ Change, the Parties shall follow the Variation procedure set out in clause 27 (*Changing this Contract*) in respect of the relevant Exclusive TQ Change. The Charges relating to such Exclusive TQ Change shall be agreed between the Parties as part of the Impact Assessment for the relevant Variation, each Party acting reasonably and promptly, prior to the Supplier commencing work on the Exclusive TQ Change. The relevant Charges shall:

8.6.1 be a reasonable cost for implementing the Exclusive TQ Change in the circumstances;

8.6.2 take into account and be calculated using:

(i) for personnel related costs and other relevant charges which are set out in the Rate Card, the applicable Rate Card rates; and

(ii) reasonable charges for any non-personnel related costs which are not included in the Rate Card and which will be incurred by the Supplier to implement the Exclusive TQ Change; and

8.6.3 be consistent with the costs applicable to any relevant costed change scenario set out in Schedule 6 (*Pricing Schedule*) or, where no costed change scenario for the applicable TQ Change is set out in Schedule 6 (*Pricing Schedule*), be calculated on the same basis and using the same logic and inputs as those which applied to determine the costs for the costed change scenarios, as such logic and inputs may be amended only to the extent as is necessary to reflect the TQ Change in question.

8.7 Where the TQ Change is an Inclusive TQ Change, the Supplier shall implement such Inclusive TQ Change at the cost of the Supplier and there shall be no additional Charges or Fees as a result of such Inclusive TQ Change.

8.8 The Supplier shall obtain the Authority's prior written agreement before implementing any TQ Change which, in the case of an Exclusive TQ Change, shall be in the form of an executed Variation to this Contract. Following such agreement the Supplier shall, unless otherwise agreed with the Authority, implement:

8.8.1 Inclusive TQ Changes such that the updated TQ is ready for teaching to new Students in the next Academic Year following the date of such agreement; and

8.8.2 Exclusive TQ Changes such that the updated TQ is ready for teaching to new Students in the second Academic Year following the date of such agreement,

provided that in each case that the Supplier shall continue to make available the version of the TQ prior to such TQ Change as is necessary to support continuing Students who commenced their studies on such version of the TQ prior to the implementation of such TQ Change.

8.9 The Supplier shall consult with a representative sample of relevant Employers and take into account the output of consultation with such Employers as appropriate in relation to any TQ Change in accordance with the Service Requirements, and shall on request provide the Authority with evidence of such consultation.

8.10 If the Supplier makes any Inclusive TQ Changes, the Supplier must resubmit the TQ documentation including any Products (as amended to reflect the TQ Change in question) to the Authority for agreement by the relevant date prescribed by the TQ Content Updating Schedule before (where applicable) making the relevant revised version of the TQ available to Approved Providers for delivery to Students.

8.11 If the Supplier makes any Exclusive TQ Changes, the Supplier must resubmit the TQ documentation including any Products (as amended to reflect the TQ Change in question) to the Authority for IfATE Approval by the relevant date prescribed by the TQ Content Updating Schedule before (where applicable) making the relevant revised version of the TQ available to Approved Providers for delivery to Students and the provisions of clause 5.14 shall apply to such amended TQ documentation as if references to the “Final Submission” (or “Final Re-Submission” (as the case may be)) in that clause 5.14 are references to the “TQ documentation including any Products (as amended to reflect the TQ Change in question)”; reference to the “Final Approval Milestone” is a reference to the “TQ Change in question”; and references to payment refer to payment of any charges agreed in the applicable Variation.

8.12 Unless otherwise agreed with the Authority in writing, any agreed or approved (as the case may be) updates to the TQ must (where applicable) be made available to

Approved Providers by the Supplier by the relevant date prescribed by the TQ Content Updating Schedule.

9 Record keeping, monitoring and reporting

9.1 Without prejudice to clause 5.5 (*Developing the TQ and achieving IfATE Approval and Accreditation*) and clause 7.6 (*Interaction with Providers*), the Supplier shall:

9.1.1 monitor and report (in an Operational Delivery Report) its performance of the Services (other than the Initial Development Services) in accordance with Schedule 15 (*Monitoring of Performance*) and the Parties agree that the provisions of such Schedule 15 (*Monitoring of Performance*) shall apply to determine (amongst other things) the process following (and the outcome of) such monitoring and reporting (including in relation to the carrying out of the Performance Review Meeting and the requirement for and consequences of any KPI Improvement Plan); and

9.1.2 comply with the record keeping and reporting obligations set out in paragraphs 5, 8 and 10 of Part 1 of the Service Requirements.

9.2 The Supplier must allow, and must ensure that any Key Subcontractor allows, any Auditor access to the Supplier's or Key Subcontractor's premises and/or systems (including IT systems), as relevant, to Audit everything to do with this Contract and/or to obtain any information required in relation to any investigation by Ofqual.

9.3 The Supplier must provide, and must ensure that any Key Subcontractor provides, information to the Auditor and reasonable co-operation at the Auditor's request to enable any Audit to be undertaken.

9.4 The Supplier must create and maintain throughout the Term a full and accurate version control log recording all TQ Changes made during the Term.

9.5 The Supplier shall maintain and shall promptly, following a written request by the Authority, provide to the Authority, the following:

9.5.1 the Supplier's detailed and up to date cost model for the provision of the Services under this Contract including a future projection for the remaining Term;

9.5.2 details of the income received by the Supplier through the provision of the Services during the Term to date, including a breakdown by service and customer and a future projection for the remaining Term; and

9.5.3 the Supplier's calculation of the overall level of profit it has achieved during the Term to date through the Services provided under this Contract.

10 Supplier Staff and Subcontracting

Supplier Staff

10.1 The Parties agree that, at the Effective Date, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier and the provisions of Schedule 7 (*Staff (including Key Personnel*)) shall apply.

10.2 The Supplier Staff involved in the performance of this Contract must:

10.2.1 be appropriately trained and qualified; and

10.2.2 be vetted using Good Industry Practice and, in the case of Supplier Staff referred to in paragraph 4.2 of Schedule 7 (*Staff (including Key Personnel*)), in accordance with paragraph 4 of Schedule 7 (*Staff (including Key Personnel*)).

10.3 If any default, acts, omissions, negligence and/or statements of any of the Supplier Staff involved in the performance of this Contract result in a Default, the Supplier is liable to the Authority for that Default.

10.4 Where the Authority decides (on reasonable grounds) that one of the Supplier's Staff is not suitable to work on this Contract, the Supplier must, subject to clause 10.2, promptly replace them with a suitably qualified alternative.

10.5 If requested by the Authority, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 30 (*Preventing fraud, bribery and corruption*).

Subcontracting

10.6 The Supplier shall comply with the provisions of Schedule 8 (*Supply Chain (including approved Subcontractors)*) in respect of the appointment (including any proposed

appointment) and/or management of any Subcontractor (including any Key Subcontractor).

10.7 Sub-contracting any part of this Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under this Contract.

11 Rights and protection

11.1 The Supplier warrants and represents that:

11.1.1 it has full capacity and authority to enter into and to perform this Contract;

11.1.2 this Contract is executed by its authorised representative;

11.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;

11.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform this Contract;

11.1.5 it maintains all necessary rights, authorisations, licences and consents to perform its obligations under this Contract;

11.1.6 it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract;

11.1.7 it is not subject to an Insolvency Event; and

11.1.8 all statements made, and documents submitted, as part of the procurement of the Services (including in the Supplier's Response) are true and accurate.

11.2 The warranties and representations in clause 11.1 are repeated each time the Supplier provides the Services and/or supplies any Products under this Contract.

11.3 The Supplier indemnifies the Authority in full against all Losses suffered or incurred by the Authority arising out of or in connection with third party claims that result from the provision of the Services including the supply of the Products.

11.4 All claims indemnified under this Contract (including for the avoidance of doubt any indemnified IPR Claim) must use the process set out in clause 29 (*Dealing with claims*).

11.5 The Authority can, even if it has made a claim in respect of the breach, still terminate this Contract for breach of any warranty or indemnity where it is entitled to do so.

11.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Authority.

12 Intellectual Property Rights

Vesting, ownership and licences of rights in TQ materials

12.1 The Supplier agrees to deliver such materials, and to assign or licence all IPR in such materials, as it creates, identifies for use, or uses as part of or for the Operation of the TQ to which the Authority and/or a Replacement Supplier with Relevant Competence would reasonably require access:

12.1.1 for the Authority to carry out its activities in relation to the T Level and TQ, including the approval, oversight and maintaining the integrity of the T Level and TQ;

12.1.2 for the transfer of the Operation of the TQ to a Replacement Supplier; and

12.1.3 for the Replacement Supplier to Operate (including maintaining the integrity of, modifying and developing) the TQ,

in a seamless, Transparent manner; and

12.1.4 to compete openly and effectively any future competition or tender for the Operation of the TQ or a Replacement TQ.

12.2 Without limiting the generality of clause 12.1:

12.2.1 the Supplier agrees to assign to the Authority all IPR in the Key Materials (including in Products) in accordance with the TQ Assignment and Licence;

12.2.2 the Supplier agrees to licence the Authority, with the right to sublicense, all IPR in the Ancillary Materials, in accordance with the TQ Assignment and Licence; and

12.2.3 in respect of any IPR in Key Materials, to the extent that the same are not at the relevant time vested absolutely in the Authority, the Supplier agrees

to license the Authority, with the right to sublicense, such IPR in Key Materials, in accordance with the TQ Assignment and Licence.

12.3 Except as set out above or otherwise expressly provided in this Contract:

12.3.1 the Authority shall not by virtue of this Contract acquire title to or rights in any Background IPR owned by the Supplier or any third party; and

12.3.2 the Supplier shall not by virtue of this Contract acquire title to or rights in any Background IPR owned by the Authority or licensed by any third party to the Authority.

12.4 Without prejudice to the other provisions of this Contract, the assignments and licences referred to in clause 12.2 shall be subject to the terms of the TQ Assignment and Licence (during and after the Term), including the warranties and representations set out in the TQ Assignment and Licence. The Authority and the Supplier will enter into the TQ Assignment and Licence in the form set out in Schedule 14 (*Form of Assignment and Licence*) on the Effective Date.

Rights granted to the Supplier

12.5 The Authority hereby grants to the Supplier a non-exclusive worldwide, royalty free licence with the right to sublicense, subject to, and in accordance with, the terms of this Contract, to use:

12.5.1 the Outline Content;

12.5.2 the IfATE Data; and

12.5.3 any Authority Background IPR in other materials specifically identified for use in the provision of the Services in accordance with this sub-clause,

during the Term, solely in relation to the provision of the Services.

12.6 The Authority hereby grants to the Supplier, in so far as any relevant Intellectual Property Rights have been assigned to the Authority or are otherwise at the time vested in the Authority in accordance with clause 12.2, a worldwide, royalty free licence, with the right to sublicense, to use and exploit the IPR in the Key Materials during the Term in relation to the TQ subject to, and in accordance with, the relevant terms of this Contract.

12.7 Subject to clause 12.8, the licence to the Supplier under clause 12.6 shall be exclusive during the Term solely in respect of use of the Key Materials for the provision of the Services in respect of the Exclusive Cohorts.

Rights retained by the Authority for its activities related to the provision of the Services

12.8 The Authority will retain:

12.8.1 (for the avoidance of doubt) the non-exclusive right to use the Key Materials in its administration, approval and oversight of the TQ and other T Level technical education qualifications and to make the same available to others (such as Ofqual) to do the same; and

12.8.2 the right to use the Key Materials, and for any Future Supplier or potential Future Supplier to use the Key Materials:

(i) for competing or tendering for the delivery and Operation of the TQ and/or any Replacement TQ, where such competition or tender is for such delivery and Operation during any Transition Period and/or following expiry or termination of this Contract (ie the End Date); and

(ii) to deliver and Operate the TQ and/or any Replacement TQ, during any Transition Period; and

12.8.3 the right to sub-license others to exercise the rights set out in this clause 12.8.

Confirmation of rights, marking and branding of Materials

12.9 The Supplier shall, on any copy of any materials in which copyright belongs to the Authority, prominently mark such material with a notice saying: “Copyright in this [DOCUMENT/section of DOCUMENT] belongs to, and is used under licence from, the Institute for Apprenticeships and Technical Education [DATE]” or such other notice as the Authority may reasonably require by notice to the Supplier from time to time. Without prejudice to any rights granted to the Authority under this Contract, in the case of each Deliverable the Supplier shall deliver a certificate in the form annexed to the TQ Assignment and Licence confirming that ownership in the IPR in that Deliverable is vested in the Authority, or where it asserts that IPR in the Deliverable or certain parts

of it do not vest in the Authority, identifying specifically those parts and the scope of rights it asserts the Supplier has in respect of the same.

12.10 The Supplier may use its name, logos, trade marks and/or other signs which refer to the Supplier on Key Materials and Ancillary Materials and other materials used in the Operation of the TQ or to promote the TQ which are of the type set out in the T Level Branding Guidelines, provided that any such use shall be strictly as set out in the T Level Branding Guidelines. Without prejudice to the last sentence, the Supplier shall, on notice from the Authority, provide representative samples of all such use, and, if the notice so requests, provide such samples a reasonable period in advance of any proposed such use together with a period (not being less than 7 Working Days) for comment. The Authority may notify the Supplier within such period of any comments, including any requirements it has in respect of such use, and, the Supplier shall take reasonable account of any such comments and comply with any reasonable requirements of the Authority so notified.

12.11 The Supplier shall not use its name, logos, trade marks and/or other signs which refer to the Supplier, in a trade mark manner or as any designation of origin, on any material referred to in clause 12.10 or otherwise in connection with its Operation of T Levels or T Level technical education qualifications (including the TQ), except as provided in clause 12.10 or otherwise with the specific Approval of the Authority; and in any event any use of its name, logos, trade marks and/or other signs which refer to the Supplier in connection with the T Level or T Level technical education qualifications (including the TQ) shall not be such as to make, suggest or imply any connection between the Authority or any T Levels or any T Level technical education qualifications and the Supplier, or endorsement by the Authority or the Department, other than as arises under this Contract or any other contract for the supply of T Level technical education qualifications.

12.12 The Supplier shall:

12.12.1 apply to all Key Materials and Ancillary Materials provided to any third party, the Authority's name and logo in such manner as is reasonably prescribed from time to time in writing by the Authority; and

12.12.2 use in respect of the TQ, including, unless otherwise agreed with the Authority, on all Key Materials and Ancillary Materials, such descriptive name (for example in the form: "[technical qualification] in Construction") as

is determined by the Authority or proposed by the Supplier and agreed by the Authority,

provided that such use shall at all times be in strict accordance with the other provisions of this Contract, the T Level Trade Mark Licence, and any style guides or other instructions issued from time to time by the Authority.

Supplier's operation of other qualifications

12.13 The Supplier shall not, within or outside England, offer or promote any qualification other than the TQ as:

12.13.1 being the TQ (or any other technical qualification forming part of a T Level) or T Level (or part of a T Level);

12.13.2 being identical in terms of content and assessment requirements to the TQ (or any other technical qualification forming part of a T Level) or T Level and/or including identical components to the TQ (or any other technical qualification forming part of a T Level) or T Level; or

12.13.3 demonstrating the same level of occupational competence as the TQ (or any other technical qualification forming part of a T Level) or T Level,

provided always that nothing in this Contract shall prevent the Supplier from offering or promoting the technical qualification element of a T Level under a separate contract with the Authority in connection with the making available of that technical qualification.

12.14 The Supplier may only re-use the whole of the TQ in an un-amended or materially un-amended form, other than as part of the Services during the Term, as follows:

12.14.1 in the Operation of qualifications for any of the Devolved Administrations, with the specific Approval of the Authority;

12.14.2 in the Operation of qualifications in England intended for and only marketed to students who are not in the category known as "16 to 19 year old", with the specific Approval of the Authority; and

12.14.3 in the Operation of qualifications outside the UK, save in any jurisdictions the Authority excludes by notice to the Supplier,

provided in each case that the name “T Level” is not used in the qualification or any marketing or promotion of the qualification, and that it is at all times clear and made clear to students and other third parties that the qualification does not form and cannot be used as any part of a T Level.

12.15 Subject to clauses 12.13 and 12.14, nothing in this Contract or the TQ Assignment and Licence shall restrict or prevent the Supplier from continuing to offer and update its existing qualifications (including technical qualifications), from offering new technical qualifications, or from using elements of the Key Materials in the operation of qualifications other than the TQ.

Dealing with intellectual property claims

12.16 If there is an IPR Claim, the Supplier indemnifies the Authority against all Losses suffered or incurred by the Authority as a result.

12.17 Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer in writing assigning the IPR to the other Party on request and at its own cost.

12.18 Clause 12.16 shall not apply to the extent that the IPR Claim is caused by the Authority’s use of the relevant IPR in breach of the terms of this Contract.

12.19 In the event that any Third Party IPR is included in the Key Materials, Ancillary Materials, or other Deliverables under this Contract, the Supplier shall ensure that it has or acquires sufficient rights to any such Third Party IPR to enable it to enter into any applicable assignments and to grant any applicable licences under this Contract.

Portability of the TQ

12.20 The Supplier shall, where possible, ensure that its design and development of the TQ enables the transfer of the materials described in clause 12.1 to a Future Supplier without requiring use by such Future Supplier of any underlying proprietary system or platform which does not form part of the Key Materials or Ancillary Materials.

13 <u>What may happen if there are issues with your provision of the Services</u>

13.1 The Supplier must notify the Authority promptly in writing if:

13.1.1 it becomes aware of any problem or complaint from any individual or organisation in relation to the making available and/or operation of the TQ;

13.1.2 it makes any changes to its management, governance, organisational and/or operational structure or capacity from that which is set out in the Supplier's Tender which shall or may be material to the provision of the Services;

13.1.3 it undergoes or proposes to undergo (or, without prejudice to clause 14.7 (*When Sub-Contracts can be ended*) becomes aware that a Subcontractor has undergone or proposes to undergo) a change of Control;

13.1.4 there is a material adverse change in the financial circumstances of the Supplier, the Supplier becomes aware of a material adverse change in the financial circumstances of the Guarantor or any of the Key Subcontractors, or the Supplier has (or anticipates that it may have) insufficient funding to adequately resource its obligations under this Contract;

13.1.5 it becomes aware of any circumstances relating to the Supplier or any Subcontractor which shall or may bring into disrepute and/or diminish the trust that the public places in the Authority, the Department or the ESFA and/or the T Levels Programme (including any Conflict of Interest (as contemplated by clause 35 (*Conflict of interest*)) and/or any child protection and/or data handling issues and/or incidents);

13.1.6 it becomes aware of any issue which shall or may have an adverse impact on Students studying for the TQ;

13.1.7 it is required, pursuant to the Conditions of Recognition, to notify Ofqual of any event that has occurred (or is likely to occur) which it has cause to believe could have an "Adverse Effect" (as defined in the Conditions of Recognition);

13.1.8 any of the circumstances in clause 14.7 (*Ending or extending this Contract*) occur; or

13.1.9 a Critical Service Failure occurs.

13.2 If:

13.2.1 the Supplier has failed to make the Submission for the relevant Interim Milestone on or prior to the Submission Date for that relevant Interim Milestone;

13.2.2 the Authority reasonably believes that:

(i) the Supplier is not likely to achieve IfATE Approval by the Final Approval Milestone Date;

(ii) the Authority is likely to need to withdraw IfATE Approval;

(iii) Ofqual is likely to need to withdraw Ofqual Recognition;

13.2.3 the Authority has obtained information giving rise to reasonable concerns about the ability of the Supplier to deliver the Services and the Authority has provided such information to the Supplier and given the Supplier a reasonable opportunity (in the circumstances) to respond to such information and any such response fails to address such concerns to the satisfaction of the Authority;

13.2.4 the Supplier fails, in the opinion of Ofqual, to comply with any Condition of Recognition;

13.2.5 the Supplier is under investigation and/or subject to regulatory enforcement by Ofqual or has had any direction issued by Ofqual in respect of it;

13.2.6 the Supplier fails to comply with and/or implement (as the case may be) the whole or any part of the Implementation Plan in any material respect;

13.2.7 the Supplier fails to deliver the Services in accordance with the Resource Plan in any material respect;

13.2.8 the circumstances referred to in paragraph 2.3.2 of Schedule 15 (*Monitoring of Performance*) occur;

13.2.9 a Supplier Termination Event has occurred; and/or

13.2.10 any act or omission of the Supplier in relation to the TQ in breach of this Contract occurs which shall or may have a material adverse impact on Students and/or the TQ including any such act or omission which:

(i) gives rise to prejudice to Students or potential Students; or

(ii) adversely affects:

(A) the ability of the Supplier to undertake the development, delivery or award of the TQ in accordance with its Conditions of Recognition;

(B) the standards of the TQ which the Supplier makes available or proposes to make available; or

(C) public confidence in the TQ,

the Authority may issue written notification of Designated Action to the Supplier, following which the Supplier shall comply with the Designated Action in accordance with any timeframe stated in such notification. In the event that, for any reason, the Supplier is unable to comply with the Designated Action notification, the Supplier shall promptly notify the Authority and shall explain the reason why it is unable to so comply.

13.3 In the event of a Critical Service Failure, in addition to the rights of the Authority under clause 13.2 (*What may happen if there are issues with your provision of the Services*) and 14.3 (*Ending or extending this Contract*), the Authority may by serving written notice on the Supplier:

13.3.1 suspend and/or restrict any elements (in full or part) of the Services for the remainder of the Term, including a permanent prohibition or restriction on the Supplier from providing the Services (including making the TQ and/or any Products available to Approved Providers):

(i) to Cohorts (including any Exclusive Cohort) in respect of which Students are already registered for the TQ; and/or

(ii) in respect of any further Cohorts (including any Exclusive Cohort);

13.3.2 reduce the Term by one or more periods of 12 months as specified in such notice and accordingly remove one or more Cohorts from the Exclusive Cohorts; and/or

13.3.3 require the Supplier to comply with specified performance improvement conditions in relation to the Services, failing which the Term will reduce by

one or more periods of 12 months as specified in such notice and the final Cohort will then be removed from the Exclusive Cohorts.

13.4 Nothing in this Contract (and no action by the Authority) shall be construed so as to limit or restrict the ability of Ofqual to take action under its statutory powers and in the event of any Dispute arising out of or in connection with Ofqual Recognition and/or any Condition of Recognition the provisions of clause 37.7 (*Resolving disputes*) will apply.

13.5 The Supplier shall provide (and shall procure that its Subcontractors provide) all information and cooperation as is required by the Authority to enable the Authority to investigate any alleged breach by the Supplier of its obligations under this Contract.

13.6 The Authority may withdraw IfATE Approval by notice in writing to the Supplier in circumstances where the requirements for IfATE Approval are no longer met by the Supplier. The Authority shall notify the Supplier in advance in writing of its proposal to withdraw IfATE Approval and shall provide a reasonable opportunity for the Supplier to make representations in relation to such proposal, and the Authority shall take such representations into account in determining whether to proceed to withdraw IfATE Approval.

14 Ending or extending this Contract

14.1 This Contract ends on the End Date.

Extending this Contract

14.2 The Authority can extend this Contract for the Extension Period by giving the Supplier written notice prior to the start of the Academic Year in which the final Exclusive Cohort commences the TQ.

When the Authority can end this Contract

14.3 If a Supplier Termination Event occurs, the Authority has the right to immediately terminate this Contract by issuing a Termination Notice to the Supplier, unless the Supplier Termination Event occurs as a result of a breach of this Contract by the

Authority, but only insofar as the Authority's breach is not itself caused by a breach by the Supplier of the Supplier's obligations under this Contract.

What happens if this Contract ends

14.4 Where the Authority terminates this Contract, all of the following apply:

14.4.1 the Supplier shall apply to Ofqual, in accordance with the instructions of the Authority, for its Ofqual Recognition in respect of the TQ to be withdrawn;

14.4.2 the accumulated rights of the Authority are not affected;

14.4.3 the Authority grants to the Supplier a non-exclusive worldwide, royalty free irrevocable licence to use the IfATE Data solely to the extent that such IfATE Data consists of: (i) information relating to the identities of Providers and persons engaged by them, which it shall be entitled to use for any purpose; and (ii) Student Related Data provided that no individual Student can be identified from such Student Related Data, which it shall be entitled to use for research purposes in order to develop or improve upon any Supplier qualification (including material prepared, and training provided, in support of such qualification);

14.4.4 the Supplier must promptly return (or, where required by the Authority, delete) the IfATE Data except where required to retain copies by Law, the Conditions of Recognition, or for the purposes of exercising its rights under the licence granted under clause 14.4.3;

14.4.5 the Supplier must promptly return any of the Authority's property provided to it under this Contract;

14.4.6 the Supplier must at no cost to the Authority reasonably co-operate in the re-procurement and/or handover of the Services (including to a Replacement Supplier);

14.4.7 the Supplier must comply with the relevant provisions of Schedule 12 (*Exit Management*); and

14.4.8 this clause 14.4 and the following clauses survive the termination of this Contract: clauses 9, 11.3, 12, 15, 17, 18, 19, 21, 37 and 38 and any clauses

and/or Schedules which are expressly or by implication intended to continue.

When the Supplier can end this Contract

14.5 The Supplier can terminate this Contract by issuing a Termination Notice if the Authority fails to pay any Charges which have fallen due under this Contract and which are directly payable by the Authority within 30 days of the date of a Reminder Notice issued by the Supplier in respect of such sum.

14.6 If the Supplier terminates this Contract under clause 14.5:

14.6.1 the Authority must promptly pay all outstanding Charges referred to in clause 14.5 to the Supplier; and

14.6.2 clauses 14.4.1 to 14.4.8 shall apply.

When Sub-Contracts can be ended

14.7 At the Authority's request, the Supplier must terminate (or procure the termination of (as the case may be)) any Sub-Contracts in any of the following events:

14.7.1 there is a change of Control of the relevant Subcontractor which is not pre-approved in writing by the Authority and which the Authority believes shall or may have an adverse impact on the Services;

14.7.2 the acts or omissions of the relevant Subcontractor have caused or materially contributed to a right of the Authority to terminate this Contract;

14.7.3 a Supplier Termination Event is caused or contributed to by the relevant Subcontractor or where any analogous events referred to in limbs (b), (d), (e), (f), (g), (h), (j) or (l) of the definition of Supplier Termination Event occurs in respect of the Subcontractor; or

14.7.4 the relevant Subcontractor sub-contracts any of its obligations in relation to the Services in breach of the requirements of this Contract.

15 How much each Party can be held responsible for

15.1 Subject to the following provisions of this clause 15, each Party's total aggregate liability under this Contract (whether in tort, contract or otherwise) for each claim or series of connected claims is no more than £1,000,000.

15.2 No Party is liable to the other for:

15.2.1 any indirect, special or consequential Loss; or

15.2.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect), provided always that, subject to clause 15.1, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority, the Department and/or the ESFA, to the extent that they arise as a result of a Default by the Supplier:

(i) any additional operational and/or administrative costs and expenses, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

(ii) any wasted expenditure or charges;

(iii) the additional cost of procuring Replacement Services for the remainder of the Contract Period, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Contract;

(iv) any compensation or interest paid to a third party by the Authority; and

(v) any fine or penalty pursuant to Law and any costs in defending any proceedings which result in such fine or penalty.

15.3 The Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for purpose of any data information and/or documentation disclosed by or on behalf of the Authority prior to or after the Effective Date and neither the Authority nor any of its employees or agents shall be liable (howsoever arising) for any inaccuracy, omission, unfitness for purpose or inadequacy of any kind whatsoever in any such data information and/or documentation.

15.4 Nothing in this Contract shall operate to exclude or limit the liability of either Party in relation to the following:

15.4.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;

15.4.2 bribery or fraud or fraudulent misrepresentation by it or its employees; or

15.4.3 any liability that cannot be excluded or limited by Law.

15.5 Each Party must use its reasonable endeavours to mitigate any Losses which it suffers under or in connection with this Contract, including where any such Losses are covered by an indemnity.

15.6 When calculating the Supplier's liability under clause 15.1, Losses covered by Required Insurances will not be taken into consideration.

16 Insurance

16.1 Without prejudice to its obligations to the Authority under this Contract, including its indemnity obligations, the Supplier shall take out and maintain at its own cost, or procure the taking out and maintenance of, the Required Insurances. The Supplier shall ensure that each of the Required Insurances is effective no later than the date on which the relevant risk commences.

16.2 The Required Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.

16.3 The Required Insurances shall be taken out and maintained with insurers who are: (a) of good financial standing; (b) appropriately regulated; and (c) of good repute in the international insurance market.

16.4 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.

16.5 Where the Supplier has failed to purchase any of the Required Insurances or maintain any of the Required Insurances in full force and effect, the Authority may elect (but

shall not be obliged) following written notice to the Supplier to purchase the relevant Required Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

16.6 The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in full force and effect and meet in full the requirements of this clause 16. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Contract.

16.7 The Supplier shall ensure that the public and products liability policy forming part of the Required Insurances shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

17 Data protection and information

17.1 Each Party shall comply with the Data Protection Legislation.

17.2 The Supplier must ensure that Personal Data is Processed in accordance with Schedule 9 (*Data Handling and Security Management*).

17.3 The Supplier must not remove any ownership or security notices in or relating to the IfATE Data.

17.4 The Supplier must make accessible back-ups of all IfATE Data, stored in an agreed off-site location. The Supplier must send the Authority copies every six Months of the Ancillary Materials and the Key Materials (in each case to the extent that these have not already been provided to the Authority), and any further information falling within the definition of IfATE Data as may be requested by the Authority in writing from time to time.

17.5 The Supplier must ensure that any Supplier system holding any IfATE Data, including back-up data, is a secure system that complies with the Security Policy and the relevant provisions of Schedule 9 (*Data Handling and Security Management*).

17.6 If at any time the Supplier suspects or has reason to believe that the IfATE Data provided or generated under this Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Authority and immediately suggest remedial action.

17.7 If the IfATE Data is corrupted, lost or sufficiently degraded so as to be unusable the Authority may either or both:

17.7.1 tell the Supplier to restore or get restored IfATE Data as soon as practical but no later than 5 Working Days from the date that the Authority receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or

17.7.2 restore the IfATE Data itself or using a third party.

17.8 The Supplier must pay each Party's reasonable costs of complying with clause 17.7 unless the Authority is at fault.

17.9 The Supplier:

17.9.1 must provide the Authority with all IfATE Data in an agreed open format within 10 Working Days of a written request;

17.9.2 must have documented processes to guarantee prompt availability of IfATE Data if the Supplier stops trading;

17.9.3 must securely destroy all Storage Media that has held IfATE Data at the end of life of that media using Good Industry Practice;

17.9.4 must securely erase all IfATE Data and any copies it holds when asked to do so by the Authority unless required by Law to retain it; and

17.9.5 indemnifies the Authority against any and all Losses suffered or incurred by the Authority if the Supplier breaches this clause 17 and/or any Data Protection Legislation.

18 <u>What must be kept confidential</u>

Confidential Information

18.1 Each Party must, subject to the following provisions of this clause 18;

18.1.1 keep all Confidential Information it receives confidential and secure;

18.1.2 not disclose, use or exploit the Confidential Information disclosed by the Disclosing Party without the Disclosing Party's prior written consent, except for the purposes anticipated under this Contract; and

18.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

18.2 Notwithstanding clause 18.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

18.2.1 where disclosure is required by applicable Law or by a court with the required jurisdiction, if the Recipient Party (to the extent that it is permitted to do so by such applicable Law or by such court) notifies the Disclosing Party in advance of disclosure of the full circumstances, the affected Confidential Information and extent of the disclosure;

18.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed to it by the Disclosing Party;

18.2.3 if the information was given to it by a third party without obligation of confidentiality;

18.2.4 if the information was in the public domain at the time of the disclosure;

18.2.5 if the information was independently developed without access to the Confidential Information of the Disclosing Party;

18.2.6 to its auditors or for the purposes of regulatory requirements;

18.2.7 on a confidential basis, to its professional advisers on a need-to-know basis;

18.2.8 to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010; and/or

18.2.9 where disclosure is permitted in accordance with Schedule 4 (*Co-operation*).

18.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under this

Contract. The Supplier must ensure that the Supplier Staff enter into a direct confidentiality agreement with the Authority at the Authority's request.

18.4 The Authority may disclose Confidential Information in any of the following cases:

18.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Authority;

18.4.2 on a confidential basis to any Crown Body, any successor body to a Crown Body or any company that the Authority transfers or proposes to transfer all or any part of its business to;

18.4.3 where permitted by the Technical and Further Education Act 2017, (including to the ESFA or Ofqual and as contemplated by clause 5.16 (*Developing the TQ and achieving IfATE Approval and Accreditation*));

18.4.4 if the Authority (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;

18.4.5 where requested by Parliament;

18.4.6 under clauses 4.10 (*Pricing and payments*) and 19 (*When information can be shared*); or

18.4.7 save for Exit Information, where the information was generated as part of the provision of the Services.

18.5 For the purposes of clauses 18.2 to 18.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in this clause 18.

Student Related Data

18.6 The Supplier must:

18.6.1 keep all Student Related Data confidential and secure;

18.6.2 immediately notify the Authority if it suspects unauthorised access, copying, use or disclosure of the Student Related Data.

18.7 The Supplier shall not store, copy, disclose, or use the Student Related Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

Transparency Information and other disclosures

18.8 Transparency Information and any information which is exempt from disclosure by clause 19 (*When information can be shared*) is not Confidential Information.

18.9 The Supplier must not make any press announcement or publicise this Contract or the output of the Services (including the Student Related Data) without the prior written consent of the Authority and must take all reasonable steps to ensure that Supplier Staff do not either.

19 <u>When information can be shared</u>

19.1 The Supplier acknowledges that:

19.1.1 the Transparency Reports; and

19.1.2 the content of this Contract, including any changes to this Contract agreed during the Term, except for (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and (ii) Commercially Sensitive Information,

(together the "**Transparency Information**") is not Confidential Information.

19.2 The Supplier must tell the Authority within 48 hours if it receives a Request For Information.

19.3 Within the timescales required by the Authority, the Supplier must give the Authority full co-operation and information needed so the Authority can:

19.3.1 publish the Transparency Information; and

19.3.2 comply with any Request for Information.

19.4 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose information (including Confidential Information and Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. However, to the extent that it is permitted to do so (in accordance with the Secretary

of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA), the Authority shall, in relation to any Request for Information relating to Confidential Information or Commercially Sensitive Information of the Supplier:

19.4.1 notify the Supplier of such Request for Information as soon as is reasonably practicable; and

19.4.2 allow the Supplier to make representations in relation to any exemptions the Supplier considers may apply to the disclosure of its information under the Request for Information and take such representations into account when making its decision of what it will disclose.

19.5 Notwithstanding any other provision in this Contract, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

20 Invalid parts of this Contract

If any part of this Contract is held to be void or otherwise unenforceable by any court of competent jurisdiction, such part shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.

21 No other terms apply

The provisions incorporated into this Contract are the entire agreement between the Parties. This Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

22 Other people's rights in this Contract

22.1 The Department may enforce any of the Authority's rights under this Contract in relation to which the Department is to benefit. The Department's consent is not required to amend this Contract.

22.2 Save as provided in clause 22.1 or expressly stated in this Contract, no third parties shall be entitled to enforce any term of this Contract.

23 Circumstances beyond either Party's control

23.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under this Contract while the inability to perform continues, if it both:

23.1.1 provides a Force Majeure Notice to the other Party; and

23.1.2 uses all reasonable measures to reduce the impact of the Force Majeure Event.

23.2 The Authority can terminate this Contract if the provision of the Services is materially affected by a Force Majeure Event which lasts for 90 days continuously.

23.3 Where the Authority terminates under clause 23.2:

23.3.1 each Party must cover its own Losses; and

23.3.2 subject to clause 23.3.1, clause 14.4 applies.

23.4 Neither Party can rely on clause 23.1 where the inability to perform its obligations arises, directing or indirectly, due to the exit from the European Union by the United Kingdom.

23.5 The Supplier may not rely on clause 23.1 to the extent that the inability to perform its obligations arises directly or indirectly out of a failure by the Supplier to comply with its Business Continuity Plan.

24 Relationships created by this Contract

24.1 This Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent itself accordingly and ensure the Supplier Staff do so.

25 Giving up contract rights

25.1 A partial or full waiver or relaxation of the terms of this Contract by one Party is only valid if it is stated to be a waiver in writing to the other Party.

26 Transferring responsibilities

26.1 The Supplier must not assign, transfer or otherwise dispose of its rights, obligations and/or liabilities under the whole or any part of this Contract without Approval.

26.2 The Authority can assign, novate or transfer this Contract or any part of it to any Crown Body, public sector body or private sector body which performs the functions of the Authority.

26.3 The Supplier must enter into a novation agreement in the form that the Authority specifies where the Authority wishes to exercise its rights under clause 26.2.

26.4 The Supplier can terminate this Contract novated under clause 26.2 to a private sector body where an Insolvency Event occurs in respect of that private sector body.

26.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

27 Changing this Contract

27.1 If any change is required which is an Inclusive TQ Change, clause 8 (*TQ Changes*) shall apply in relation to such change, and this clause 27 shall not apply to any Inclusive TQ Change.

27.2 Either Party can request a Variation to this Contract, including the addition or removal of one or more Occupational Specialist Components.

27.3 The Supplier cannot unreasonably withhold or delay their consent to a Variation to this Contract.

27.4 The Supplier must provide an Impact Assessment either:

27.4.1 with the Variation Form, where the Supplier requests the Variation; or

27.4.2 within the time limits included in a Variation Form where the Authority requests the Variation.

27.5 If the Variation cannot be agreed or resolved by the Parties, the Authority can either:

27.5.1 agree that this Contract continues without the Variation; or

27.5.2 treat such failure as a Dispute which shall be addressed through the Dispute Resolution Procedure.

27.6 A Variation of this Contract is only effective if agreed in writing and signed by both Parties.

27.7 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges and/or the Fees in respect of that change.

27.8 If there is a Specific Change in Law or one is likely to happen during the Contract Period, the Supplier must give the Authority notice of the likely effects of the Specific Change in Law as soon as reasonably practical. The Supplier must also say if it thinks any Variation is needed either to the Services, the Products and/or this Contract and provide evidence:

27.8.1 that the Supplier has kept costs as low as possible and/or maximised any cost savings (as the case may be) including any Subcontractor costs; and

27.8.2 of how it has affected or will affect the Supplier's costs and/or those of any Subcontractor.

27.9 Any Variation because of a Specific Change in Law must be implemented using clauses 27.1 to 27.6.

27.10 If another awarding organisation has a contract with the Authority for the provision of services similar to the Services to deliver a different technical qualification as part of the T Levels Programme and that other awarding organisation suffers a Supplier Termination Event following which its contract with the Authority is terminated or the relevant contract is otherwise lawfully terminated, the Supplier agrees that the Authority shall have the option to request that the Supplier takes over the delivery of that different technical qualification and any related services as a Variation, which will be implemented using clauses 27.1 to 27.6. The Charges and Fees relating to such a Variation shall be agreed between the Parties as part of the Impact Assessment for the relevant Variation, each Party acting reasonably and promptly, prior to the Supplier commencing work on the Variation. The relevant Charges and Fees shall:

27.10.1 be a reasonable cost for implementing the Variation in the circumstances;

27.10.2 take into account the charges and fees that the other awarding organisation was charging in relation to that different technical qualification prior to suffering the Supplier Termination Event; and

27.10.3 take into account and be calculated using:

(i) for personnel related costs and other relevant charges which are set out in the Rate Card, the applicable Rate Card rates; and

(ii) reasonable charges for any non-personnel related costs which are not included in the Rate Card and which will be incurred by the Supplier to implement the Variation; and

(iii) the same basis and the same logic used by the Supplier to determine the relevant costs, Charges and Fees for the Services.

28 How to communicate about this Contract

28.1 All notices under this Contract must be in writing and are considered effective on the Working Day of delivery as long as delivered before 5:00 pm on a Working Day. Otherwise the notice is effective on the next Working Day. Unless expressly stated in this Contract or otherwise communicated in writing by the Authority, an email is not effective notice unless also sent by post or delivered by hand on the same day. For the avoidance of doubt, this clause 28.1 does not apply to a Variation, which must be implemented in accordance with clauses 27.2 to 27.6.

28.2 Subject to clause 28.1, notices to the Authority must be sent to the Authority Authorised Representative's address and email address, and all notices must be copied to the Head of Contracts (xxx@education.gov.uk) and the Head of Legal (xxx@education.gov.uk) at the Authority.

28.3 Subject to clause 28.1, notices to the Supplier must be sent to the Supplier Authorised Representative's address and email address.

28.4 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

29 Dealing with claims

29.1 If a Beneficiary is notified of or otherwise becomes aware of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days after such notification or date of first awareness.

29.2 At the Indemnifier's cost the Beneficiary must both:

29.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and

29.2.2 give the Indemnifier reasonable assistance with the Claim if requested.

29.3 The Beneficiary must not make admissions about the Claim or enter into any agreement or compromise in relation to the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

29.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that does not damage the Beneficiary's reputation (or, in the case of the Authority as a Beneficiary, the reputation of the Authority, the Department and/or the ESFA or the wider T Levels Programme).

29.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

29.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

29.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the relevant Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

29.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or

29.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

30 <u>Preventing fraud, bribery and corruption</u>

30.1 The Supplier must not during the Term:

30.1.1 commit a Prohibited Act or any other criminal offence in regulations 38(8), 38(9) and/or 38(10) of the Regulations; and/or

30.1.2 do or allow anything which would cause the Authority, including any of its employees, consultants, contractors, subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.

30.2 The Supplier must during the Term:

30.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;

30.2.2 keep full records to show it has complied with its obligations under this clause 30 and give copies to the Authority on request; and

30.2.3 if required by the Authority, within 20 Working Days of the Effective Date, and then annually, certify in writing to the Authority, that it has complied with this clause 30, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.

30.3 The Supplier must immediately notify the Authority if it becomes aware of any breach of clauses 30.1 or 30.2, or has any reason to think that it, or any of the Supplier Staff, has either:

30.3.1 been investigated or prosecuted for an alleged Prohibited Act;

30.3.2 been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any Crown Body;

30.3.3 received a request or demand for any undue financial or other advantage of any kind related to this Contract; or

30.3.4 suspected that any person or Party directly or indirectly related to this Contract has committed or attempted to commit a Prohibited Act.

30.4 If the Supplier notifies the Authority as required by clause 30.3, the Supplier must respond promptly to the Authority's further enquiries, co-operate with any investigation and allow the Audit of any relevant books, records and documentation.

30.5 In any notice the Supplier gives under clause 30.4 it must specify the:

30.5.1 Prohibited Act;

30.5.2 identity of the party who it thinks has committed the Prohibited Act; and

30.5.3 action it has decided to take.

31 Equality, diversity, human rights and anti-slavery

31.1 The Supplier must follow all applicable equality Law when it performs its obligations under this Contract, including:

31.1.1 protection against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and

31.1.2 any other requirements and instructions which the Authority reasonably imposes related to equality Law.

31.2 The Supplier must take all necessary steps, and inform the Authority of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on this Contract.

31.3 The Supplier must use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains and must notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains.

31.4 The Supplier must at all times conduct its business in a manner that is consistent with any anti-slavery policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this clause 31.4 and/or as may be requested or otherwise required by the Authority in accordance with any Authority anti-slavery policy.

32 Health and safety

32.1 The Supplier must perform its obligations meeting the requirements of:

32.1.1 all applicable Law regarding health and safety;

32.1.2 the Authority's current health and safety policy, as provided to the Supplier, to the extent that Supplier Staff are located at any Authority premises in the course of performing the Services under this Contract.

33 Environment

33.1 The Supplier must ensure that Supplier Staff are aware of and comply with the Environmental Policy.

34 Tax

34.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines.

34.2 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under this Contract, the Supplier must both:

34.2.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and

34.2.2 indemnify the Authority against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Term in connection with the provision of the Services by the Supplier or any Supplier Staff.

35 Conflict of interest

35.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.

35.2 The Supplier must promptly notify and provide details to the Authority if a Conflict of Interest happens or is expected to happen.

35.3 The Authority can terminate this Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

36 Reporting a breach of this Contract

36.1 As soon as it is aware of it, the Supplier and Supplier Staff must report to the Authority any actual or suspected breach of:

36.1.1 Law; or

36.1.2 clauses 30 to 35 (inclusive).

36.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith report a breach listed in clause 36.1 to the Authority or a Prescribed Person.

37 Resolving disputes

37.1 If there is a Dispute, it shall be promptly escalated in accordance with any escalation process set out in the Supplier's Response. If the Dispute remains unresolved by such process, nominated senior representatives of each Party who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.

37.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using clauses 37.3 to 37.5.

37.3 Unless the Authority refers the Dispute to arbitration using clause 37.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

37.3.1 determine the Dispute; and/or

37.3.2 grant interim remedies, or any other provisional or protective relief.

37.4 The Supplier agrees that the Authority has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

37.5 The Authority has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 37.3, unless the Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 37.4.

37.6 The Supplier cannot suspend the performance of this Contract during any Dispute.

37.7 Subject to clause 5.14.3(vi) (*Developing the TQ and achieving IfATE Approval and Accreditation*), to the extent that a Dispute relates to whether or not the Supplier has complied with a Condition of Recognition and/or requirement of Ofqual Recognition, the Parties agree that they shall request that Ofqual shall make the final decision as to whether the requirements of that Condition of Recognition and/or Ofqual Recognition have been met and any such decision by Ofqual shall be binding on both Parties.

38 Which law applies

This Contract and any issues arising out of, or connected to it, are governed by English law.

Signed by

[***DN: The highlighted details below are to be completed at the Contract award stage***]

[SUPPLIER]

[INSERT POSITION] [INSERT NAME]

Signature:

……

Signed by

THE INSTITUTE FOR APPRENTICESHIPS AND TECHNICAL EDUCATION

Chief Executive Officer

Signature:

……

Schedule 1

Definitions and Interpretation

1 Interpretation

1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (*Definitions and Interpretation*) or the relevant Schedule in which that capitalised expression appears.

1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.3 In this Contract, unless the context otherwise requires:

1.3.1 the singular includes the plural and vice versa;

1.3.2 reference to a gender includes the other gender and the neuter;

1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;

1.3.4 references to a legal entity (other than the Supplier) shall include unless otherwise expressly stated any statutory successor to such entity and/or the relevant functions of such entity, and references to the Department shall include, where relevant, the ESFA;

1.3.5 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

1.3.6 any reference to this Contract or to any other document shall include any variation, amendment or supplement to such document;

1.3.7 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";

1.3.8 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

1.3.9 references to "**clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses of and schedules to the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;

1.3.10 references to "**paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and

1.3.11 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.

2 Definitions

2.1 In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

"**Academic Year**" means 1 August to 31 July in the following calendar year;

"**Accredited**" means accredited under section 139 of the Apprenticeships, Skills, Children and Learning Act 2009 through the Ofqual accreditation process applicable to a qualification in order for that qualification to become Regulated and "**Accreditation**" shall be construed accordingly;

"**Additional Service**" means each additional service listed in Schedule 6 (*Pricing Schedule*) and detailed in Annex 10 to the Service Requirements;

"**Affected Party**" means the party seeking to claim relief in respect of a Force Majeure Event;

"**Affiliates**" means 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 of that body corporate from time to time;

"**Ancillary Materials**" means all information and materials (other than Key Materials) to which the Authority and/or a Future Supplier would require access for use for the Portability Purposes, and any other materials which would be required on or to facilitate succession to a Future Supplier in a seamless manner in relation to the TQ offered or Operated by the Supplier.

Ancillary Materials shall include, without limitation:

(a) Student results including grades;

(b) statistical analysis for grading (excludes the systems supporting the analysis);

(c) lists of Providers;

(d) marked Student evidence (with moderation outcomes);

(e) data on Student credits;

(f) data on Student appeals;

(g) data on special considerations for Students;

(h) the Assessment Strategy;

(i) Student registrations;

(j) draft materials in preparation for forthcoming assessments;

(k) the Key Dates Schedule (in respect of forthcoming assessments);

(l) lists, with contact details, of people contracted by the Supplier to perform or oversee activities which are necessary for the conduct and quality assurance of assessments for the TQ; and

(m) materials from completed assessments, such as completed Students' examination answer booklets;

"**Approval**" means the prior written consent of the Authority and "**Approve**" and "**Approved**" shall be construed accordingly;

"**Approved Assessment Strategy**" shall have the meaning given in Schedule 2 (*Service Requirements*);

"**Approved Initial TQ Deliverables**" means the Initial TQ Deliverables approved by the Authority in accordance with clause 5.14 (*Developing the TQ and achieving IfATE Approval and Accreditation*) or clause 8.10 or 8.11 (*TQ Changes*) (as the case may be) as such deliverables are reviewed and updated in accordance with this Contract;

"**Approved Provider**" means an Eligible Provider that has been granted Provider Approval in accordance with clause 7.1 (*Interaction with Providers*) and in respect of which such Provider Approval has not been revoked pursuant to clause 7.2 (*Interaction with Providers*);

"**Approved Provider's Quality Assurance Process**" means the quality assurance process referred to in, and meeting the requirements of, the relevant part of the Product Description for the TQ Specification;

"**Approved TQ Specification**" means the TQ Specification approved by the Authority in accordance with clause 5.14 (*Developing the TQ and achieving IfATE Approval and Accreditation*) or clause 8.10 or 8.11 (*TQ Changes*) (as the case may be);

"**Assessment Strategy**" means the assessment strategy referred to in, and meeting the requirements of, the Product Description for the Assessment Strategy, which unless otherwise agreed in writing with the Authority must be consistent with the relevant details forming part of the Supplier's Response;

"**Assessors**" means any assessor appointed by the Supplier to assess performance by Students in respect of the TQ Live Assessment Materials;

"**Audit**" means the Authority's right to:

(a) verify the accuracy of the Charges and any other amounts payable by the Authority (including proposed or actual variations to them in accordance with this Contract);

(b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services (including the supply of the Products);

(c) verify the Supplier's and each Subcontractor's compliance with the applicable Law;

(d) identify or investigate actual or suspected breach of clauses 30 to 34, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

(e) verify the Supplier's compliance with Schedule 9 (*Data Handling and Security Management*);

(f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor and/or any Subcontractors and/or its or their ability to provide the Services including to supply the Products;

(g) obtain such information as is necessary to fulfil the Authority's obligations to supply information for Parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

(h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;

(i) carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;

(j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

(k) verify the accuracy and completeness of any Management Information delivered or required by this Contract; and/or

(l) obtain such information as is necessary to undertake a review and/or assessment of the performance of the whole or any part of the T Levels Programme;

"**Auditor**" means any, or any combination, of:

(a) the Authority's internal and external auditors;

(b) the Authority's statutory or regulatory auditors;

(c) the Comptroller and Auditor General, its staff and/or any appointed representatives of the National Audit Office;

(d) HM Treasury or the Cabinet Office;

(e) any party formally appointed by the Authority to carry out audit or similar review functions; and

(f) successors or assigns of any of the above;

"**Authority Authorised Representative**" means the person referred to in Schedule 20 as such or the representative appointed by the Authority from time to time in relation to this Contract as notified in writing (which may, in the case of this specific notification, be by email only) to the Supplier;

"**Authority Procedural Review**" means the Authority's procedural review process as published on the Authority's web site from time to time;

"**Awarding Organisation**" means a body recognised by Ofqual as a provider of certain qualifications;

"**Background IPR**" means any IPR owned by a party prior to the Effective Date or created or developed by a party independently of this Contract, but does not include IPR in Key Materials;

"**Beneficiary**" means a Party having (or claiming to have) the benefit of an indemnity under this Contract;

"**Breach of Security**" means the occurrence of:

(a) any unauthorised access to or use of the Services and/or the Products, the sites from which the Services are delivered (and/or where the Products are developed and/or stored) and/or any information and communication technology, information or data (including the Confidential Information and the IfATE Data) used by the Authority and/or the Supplier in connection with this Contract; and/or

(b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the IfATE Data), including any copies of such

information or data, used by the Authority and/or the Supplier in connection with this Contract,

in either case as may be more particularly set out in the Security Policy;

"**Business Continuity Plan**" means the business continuity and disaster recovery plan relating to this Contract, as set out in Schedule 10 (*Business Continuity*);

"**Cabinet Office Statement**" means the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;

"**Change in Law**" means any change in Law which impacts on the provision of the Services (including the supply of the Products) and/or the performance of this Contract which comes into force after the Effective Date;

"**Charges**" means:

(a) the Development Charge payable to the Supplier by the Authority in accordance with clause 4.1.1 (*Pricing and payments*);

(b) in respect of any Exclusive TQ Change, the amount (exclusive of any applicable VAT) agreed or determined in respect of such Exclusive TQ Change in accordance with clause 8.6 (*TQ Changes*); and

(c) in respect of any other Variation, the amount agreed pursuant to clause 27 (*Changing this Contract*) in respect of such Variation.

"**Claim**" means any claim for which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;

"**Cohort**" means a group of Students who are registered by an Approved Provider with the Supplier to commence the TQ in the relevant Academic Year;

"**Commercially Sensitive Information**" means the Confidential Information listed in Schedule 18 (*Commercially Sensitive Information*) comprising of commercially sensitive information relating to the Supplier, its IPR or its business which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;

"**Comparable Supply**" means the supply of services to the Authority or another customer or client of the Supplier that are the same as or similar to the Services

(including the supply of products that are the same as or similar to the Products) including services relating to qualifications in England outside the T Levels Programme;

"**Conditions of Recognition**" means the conditions of Ofqual Recognition imposed on the Supplier by Ofqual including any general level conditions, qualification level conditions, subject level conditions and special conditions;

"**Confidential Information**" means, subject to clause 18.8 (*What must be kept confidential*), any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Authority or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "**confidential**") or which ought reasonably to be considered to be confidential. Confidential Information shall not include Student Related Data;

"**Conflict of Interest**" means a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Authority under this Contract, in the reasonable opinion of the Authority. This includes where:

(a) the Supplier's interests in any activity undertaken by the Supplier, on its behalf, or by an Affiliate of the Supplier have the potential to lead the Supplier to act contrary to the Supplier's interests in the development, delivery and award of the TQ in accordance with the Conditions of Recognition;

(b) a person who is connected to the development, delivery or award of the TQ by the Supplier has interests in any other activity which have the potential to lead that person to act contrary to his or her interests in that development, delivery or award in accordance with the Conditions of Recognition, or

(c) an informed and reasonable observer would conclude that either of these situations was the case;

"**Continuing Activities**" means activities of the Supplier under this Contract in relation to the TQ which continue following the end of the second Academic Year for the final Exclusive Cohort, such as resits, appeals, and ongoing records management;

"**Contract**" means this contract;

"**Contract Month**" means each calendar month, provided that:

(a) the first Contract Month shall commence on and from the Effective Date and shall end on the last day of the calendar month in which the Effective Date occurs; and

(b) the last Contract Month shall commence on and from the first day of the calendar month in which the End Date occurs and shall end on the End Date;

"**Contract Period**" means the period for which this Contract would remain in force (taking into account any current Extension Period) if not terminated earlier;

"**Control**" means the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and/or policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "**Controlled**" shall be construed accordingly;

"**Controller**" has the same meaning as in the GDPR;

"**Core Terms**" means the terms set out in the main body of this Contract;

"**Critical Service Failure**" means:

(a) the Ofqual Recognition of the Supplier to make the TQ available to Approved Providers for delivery to Students is withdrawn (other than pursuant to an application under clause 5.14.3(iii));

(b) a failure by the Supplier to make the Final Submission by the Final Approval Milestone Date or the failure of any Final Submission (or Final Re-Submission) to meet the requirements necessary to achieve IfATE Approval (in each case other than where such failure results from a breach of this Contract by the Authority);

(c) a failure by the Supplier to make a Final Re-Submission within the time period required by clause 5.14.2 (*Developing the TQ and achieving IfATE Approval and Accreditation*) (other than where such failure results from a breach of this Contract by the Authority);

(d) the Supplier fails to comply with clause 5.14.3(iii) (applying to withdraw its application for Ofqual Recognition in respect of the TQ where the TQ has not obtained Accreditation);

(e) the Authority withdraws IfATE Approval (having previously awarded IfATE Approval) in accordance with this Contract;

(f) any failure by the Supplier to perform a Designated Action within the specified timeframe for that Designated Action (other than where such failure results from a breach of this Contract by the Authority);

(g) any Supplier Termination Event which has occurred in respect of the Supplier in its role as an Awarding Organisation for any part of the T Levels Programme outside this Contract;

(h) any Breach of Security which either (i) results in material personal data being lost or compromised or shared without authorisation; or (ii) is not notified to the Authority promptly (and in any event within one Working Day);

(i) the Supplier breaches its obligations relating to the confidentiality of assessment papers (prior to the relevant assessment date) and/or Student results (prior to the relevant publication date); and

(j) any other event, matter or circumstance which is expressed to be (or deemed to be) a Critical Service Failure in this Contract;

"**Crown Body**" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

"**Data Protection Legislation**" means:

(a) the GDPR;

(b) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and

(c) all applicable Law about the processing of personal data and privacy;

"**Default**" means any breach of the obligations of the Supplier (including abandonment of this Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any

Supplier Staff howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Authority;

"**Deliverable**" means all information and data the Supplier creates, identifies for use, or uses as part of or for the Operation of the TQ, including Products and Management Information;

"**Department**" means the Secretary of State for Education;

"**Designated Action**" means an action which the Authority requires the Supplier to take within a specified timeframe to obtain and/or maintain IfATE Approval and/or to ensure ongoing compliance of the Supplier with the terms of this Contract and such action may include:

(a) working in a prescribed way with Authority personnel and/or a third party appointed by the Authority to achieve certain specified performance and/or progress improvements;

(b) taking appropriate remedial actions in the event that any Initial Development Services and/or interim Products provided during the development stage are not in line with the trajectory set out in the Implementation Plan;

(c) temporarily suspending and/or restricting any elements (in full or part) of the Services (including the supply of any Products);

(d) complying with increased performance monitoring, provision of information and/or increased audit;

(e) complying with any reasonable instructions of the Authority to help to mitigate actual and/or potential risks associated with delivery of the T Levels Programme; and/or

(f) providing reasonable cooperation to other Awarding Organisations and third party suppliers of the Authority appointed in connection with the T Levels Programme;

"**Development Charge**" means the amount (exclusive of any applicable VAT) referred to as the "Qualification development charge" in Schedule 6 (*Pricing Schedule*);

Development Phase – The period between commencement of the Contract and the Approval and Accreditation of the TQ, being the period during which the TQ is developed by the Supplier.

"**Development Phase Report**" means the report referred to in the second row of the first column in the Table in Annex 9 to the Service Requirements and containing the information set out in the second row of the second column of that Table;

"**Devolved Administration**" means the government of Scotland, Northern Ireland and/or Wales;

"**Disclosing Party**" means the Party directly or indirectly providing Confidential Information to the other Party in accordance with clause 18 (*What must be kept confidential*);

"**Dispute**" means any claim, dispute or difference which arises out of or in connection with this Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of this Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;

"**Dispute Resolution Procedure**" means the dispute resolution procedure set out in clause 37 (*Resolving disputes*);

"**Documentation**" means descriptions of the Services (including the Products) and KPIs, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) that is required to be supplied by the Supplier to the Authority under this Contract as:

(a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that are utilised to supply the Services or Products;

(b) is required by the Supplier in order to supply the Services or Products; and/or

(c) has been or shall be generated for the purpose of supplying the Services or Products;

"**Early Exit**" means any termination of this Contract that occurs prior to the Supplier achieving IfATE Approval;

"**Effective Date**" means the date on which the last Party to sign has signed this Contract;

"**Effective Date of Variation**" means the date on which the Variation Form comes into effect.

"**EIRs**" means the Environmental Information Regulations 2004;

"**Eligible Provider**" means any Provider referred to in the list referenced in Part 1 of Annex 8 to the Service Requirements in respect of the relevant Cohort, as such list may be updated from time to time by the Authority, or notified in writing to the Supplier in accordance with Part 2 of Annex 8 to the Service Requirements;

"**Emergency Exit**" means any termination of this Contract other than an Early Exit that is a:

(a) termination of the whole or part of this Contract prior to the Expiry Date (as extended by any Extension Period); or

(b) wrongful termination or repudiation of this Contract by either Party;

"**Employee Liability**" means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

(b) unfair, wrongful or constructive dismissal compensation;

(c) a failure to comply with TUPE;

(d) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

(e) compensation for less favourable treatment of part-time workers or fixed term employees;

(f) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance in relation to payments made by the Authority or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;

(g) claims whether in tort, contract or statute or otherwise;

(h) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"**Employer**" means any employer who has or is likely to employ Students who have successfully obtained a T Level qualification;

"**End Date**" means the earlier of:

(a) the Expiry Date (as extended by any Extension Period implemented by the Authority under clause 14 (*Ending or extending this Contract*) or as reduced by the Authority in accordance with clause 13.3.2 (*What may happen if there are issues with your provision of the Services*); or

(b) if this Contract is terminated before the date specified in (a) above, the date of termination of this Contract;

"**Environmental Policy**" means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Authority;

"**Equality and Human Rights Commission**" means the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;

"**ESFA**" means the Education and Skills Funding Agency;

"**Exclusive Cohort**" has the meaning given in clause 2.2 (*Appointment and exclusivity*);

"**Exclusive TQ Change**" means: (i) the addition of one or more new Occupational Specialist Component(s) which are to be added to the TQ following the Initial Content Date; (ii) the removal of one or more Occupational Specialist Component(s); and/or (iii) a TQ Change which is requested by the Authority as a result of revision to a relevant Standard arising out of a statutory review of such Standard by the Authority under section A2E – A2F of the Apprenticeships, Skills, Children and Learning Act 2009;

"**Exemplification Materials**" means the Guide Standard Exemplification Materials and the Grade Standard Exemplification Materials;

"**Exit Information**" has the meaning given to it in paragraph 3.2 of Schedule 12 (*Exit Management*);

"**Exit Plan**" means the plan produced and updated by the Supplier during the Term in accordance with paragraphs 1 and 2 of Schedule 12 (*Exit Management*);

"**Expiry Date**" means 2 years following expiry of the final Academic Year for the final Exclusive Cohort;

"**Extension Period**" means a period equal to that required to provide the Services (including the supply of any Products) in respect of one further Cohort, such period to commence at the start of the Academic Year immediately following the end of the Academic Year in which the fourth Exclusive Cohort commences the TQ;

"**Fair Deal for Staff Pensions**" means guidance issued by HM Treasury entitled "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 (as amended, supplemented or replaced);

"**Fees**" means:

(a) in respect of the provision of the Provider Services (other than the Additional Services), the amount (exclusive of any applicable VAT) referred to as "Entry

fee" in Schedule 6 (*Pricing Schedule*) payable per registered Student to the Supplier by the Approved Providers in accordance with clause 4.1.2 (*Pricing and payments*); and

(b) the Additional Services, the amount (exclusive of any applicable VAT) applicable to the relevant Additional Service as set against that Additional Service in Schedule 6 (*Pricing Schedule*) payable to the Supplier by the Approved Providers in accordance with clause 4.1.2 (*Pricing and payments*);

in each case, as such fees are adjusted in accordance with clauses 4.12 and 4.13 (*Pricing and payments*);

"**Final Approval Milestone**" means the Milestone set out in fourth row of the Table in Annex 7 to the Service Requirements;

"**Final Approval Milestone Date**" means the date set out against the Final Approval Milestone in the second column of the Table at Annex 7 to the Service Requirements;

"**Final Milestone Payment**" means an amount equal to 30% of the Development Charge;

"**Final Re-Submission**" means the relevant documentation and/or additional information that the Supplier is required to re-submit in accordance with clause 5.14.2 (*Developing the TQ and achieving IfATE Approval and Accreditation*);

"**Final Submission**" means the Submission applicable to the Final Approval Milestone;

"**FOIA**" means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

"**Force Majeure Event**" means, subject to clause 23.4 (*Circumstances beyond either Party's control*), any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake,

or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Staff or any other failure in the Supplier's or a Subcontractor's supply chain;

"**Force Majeure Notice**" means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

"**Future Supplier**" means any Awarding Organisation appointed, at any point in the future and including any Replacement Supplier, to operate one or more T Level technical education qualifications by or at the direction of the Authority from time to time, and where the Authority is operating a T Level technical education qualification, shall also include the Authority;

"**GDPR**" means the General Data Protection Regulation (Regulation (EU) 2016/679);

"**General Change in Law**" means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which also affects and/or relates to a Comparable Supply;

"**Good Industry Practice**" means standards, practices, methods and procedures conforming to the Law and the exercise of 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 within the relevant industry or business sector;

"**Grade Standard Exemplification Materials**" means the exemplification materials referred to in, and meeting the requirements of, the relevant part of the Product Description for the Exemplification Materials;

"**Guarantee**" means a guarantee in the form set out in Schedule 13 (*Form of Guarantee*) in relation to this Contract or any guarantee acceptable to the Authority that replaces it from time to time;

"**Guarantor**" means [•] of [•], or such other person replacing that person from time to time in accordance with this Contract;

"**Guide Standard Exemplification Materials**" means the exemplification materials referred to in, and meeting the requirements of, the relevant part of the Product Description for the Exemplification Materials;

"**IfATE Approval**" means approval by the Authority pursuant to section A2DA of the Apprenticeships, Skills, Children and Learning Act 2009 for the TQ to be made available to Approved Providers and/or Students based on the TQ meeting the requirements of paragraph 2.1 or 2.3 of Part 1 of the Services Requirements as applicable to the satisfaction of the Authority;

"**IfATE Data**" means:

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority's Confidential Information, and which:

(i) are supplied to the Supplier by or on behalf of the Authority; or

(ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract;

(b) any Personal Data for which the Authority is the Controller; or

(c) Student Related Data;

"**Impact Assessment**" means an assessment of the impact of a Variation request completed in good faith, including:

(a) details of the impact of the proposed Variation on the Services (including the supply of the Products) and the Supplier's ability to meet its other obligations under this Contract;

(b) details of the cost of implementing the proposed Variation;

(c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges and/or the Fees (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

(d) a timetable for the implementation, together with any proposals for the testing of, the Variation; and

(e) such other information as the Authority may reasonably request in (or in response to) the Variation request;

"**Implementation Plan**" means the outline Implementation Plan prepared by the Supplier as part of the Supplier's Response for implementation and delivery of the Services and supply of the Products (including to meet the Milestones) and which, as at the Effective Date, is set out in Schedule 3 (*Implementatio*n), as such plan is, subject to paragraph 2.5 of Part 1 of the Service Requirements, developed and amended from time to time to fully meet the requirements of the Product Description for the "Implementation Plan";

"**Inclusive TQ Change**" means any TQ Change that is not an Exclusive TQ Change;

"**Indemnifier**" means a Party from whom an indemnity is sought under this Contract;

"**Information Commissioner**" means the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;

"**Initial Content Date**" has the meaning given in clause 8.2 (*TQ Changes*);

"**Initial Development Services**" shall have the meaning given in paragraph 2.1 of Part 1 of the Service Requirements;

"**Initial TQ Deliverables**" means each of:

(a) the TQ Specification;

(b) the Guide Standard Exemplification Materials;

(c) TQ Specimen Assessment Materials;

(d) the Provider Approval Criteria; and

(e) the Assessment Strategy;

"**Insolvency Event**" means:

(a) in respect of a company:

(i) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

(ii) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

(iii) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

(iv) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

(v) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

(vi) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

(vii) being a "**small company**" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(b) in respect of an individual or partnership, any event analogous to those listed in limbs (a) (i) to (vii) (inclusive) occurs in relation to that individual or partnership; or

(c) any event analogous to those listed in limbs (a) (i) to (vii) (inclusive) occurs under the law of any other jurisdiction;

"**Intellectual Property Rights**" or "**IPR**" means:

(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other

rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;

(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

(c) all other rights having equivalent or similar effect in any country or jurisdiction;

"**Interim Milestone**" means each of the interim Milestones specified in the Table in Annex 7 to the Service Requirements;

"**Interim Milestone Payment**" means:

(a) in respect of Interim Milestone 1, an amount equal to 30% of the Development Charge;

(b) in respect of the Interim Milestone 4, an amount equal to 40% of the Development Charge;

"**IPR Claim**" means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services and/or supply the Products or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Contract;

"**Issues Log**" means the issues log referred to in, and meeting the requirements of, the Product Description for the Issues Log;

"**Key Dates Schedule**" means a schedule of key dates in relation to the roll-out and operation of the TQ and other technical education qualifications across the T Levels Programme including registration dates and deadlines, assessment dates, and dates for publication of results, which is based on the indicative key dates schedule in Annex 5 to the Service Requirements and is agreed in relation to the T Levels Programme between Awarding Organisations pursuant to Schedule 4 (*Co-operation*) and Approved by the Authority;

"**Key Materials**" means materials the IPR in which the Authority reasonably requires ownership of for the Portability Purposes. Examples of where the Authority may reasonably require ownership of the IPR include because the Authority or a Future

Supplier (or, where relevant, a potential Future Supplier) may need to copy or otherwise reproduce such materials (in whole or in part), to supply or communicate the same, or to be able control the use (in whole or in part) of such materials by third parties, or to authorise others to do so.

Key Materials shall include:

(i) specifications of content for each TQ including core and all specialist components;

(ii) assessment guidelines (for Providers);

(iii) quality assurance requirements (for Providers);

(iv) specimen assessment materials;

(v) standards exemplification materials;

(vi) updates or redevelopments of specifications of content;

(vii) updates and redevelopments of any Key Materials; and

(viii) any materials equivalent to the above to which a Skilled Future Supplier would reasonably require access for the Portability Purposes.

Key Materials shall not include:

(1) Support Materials, insofar as they are not part of any of the expressly included items listed above;

(2) question banks, insofar as they are not part of any of the expressly included items listed above and are not developed for the TQ; and

(3) any systems and platforms used to support the delivery of the TQ, provided that the relevant TQ content or data held in or processed by such systems and/or platforms can be extracted without requiring further processing post-extraction (and the Supplier can demonstrate that they can be so extracted) to enable use of the relevant content and/or data by a Skilled Future Supplier in conjunction with a non-proprietary or generally commercially available system or platform;

"**Key Personnel**" means the individuals identified as such in the Annex to Schedule 7 (*Staff (including Key Personnel*)) as at the Effective Date or as amended from time to time in accordance with paragraph 3.2 of Schedule 7 (*Staff (including Key Personnel)*);

"**Key Roles**" means the roles stated in the Annex to Schedule 7 (*Staff (including Key Personnel*)) as at the Effective Date or as amended from time to time in accordance with paragraph 3.2 of Schedule 7 (*Staff (including Key Personnel)*);

"**Key Sub-Contract**" means each Sub-Contract with a Key Subcontractor;

"**Key Subcontractor**" means any Subcontractor:

(a) which is relied upon to deliver any material part of the Services (including to supply any Products); and/or

(b) which, in the opinion of the Authority performs (or would perform if appointed) a critical role in the provision of all or any part of the Services (including the supply of any Products),

and which, as at the Effective Date, are listed in Annex 1 to Schedule 8 (*Supply Chain (including approved Subcontractors)*);

"**Know-How**" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services and/or the Products;

"**KPI**" means a key performance indicator applicable to the provision of the Services (including the supply of the Products), as set out in the first column of the Table attached at Annex 1 to Schedule 15 (*Monitoring of Performance*);

"**KPI Improvement Plan**" shall have the meaning given in paragraph 2.2 of Schedule 15 (*Monitoring of Performance*);

"**Law**" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

"**Losses**" means all losses, liabilities, damages, costs, expenses (including reasonable legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "**Loss**" shall be interpreted accordingly;

"**Management Information**" means the management information to be delivered to the Authority by the Supplier, as set out or referred to in Annex 9 to the Service Requirements;

"**Milestone**" means an event or task to be performed as part of the provision of the Services (and/or the supply of the Products) by a specific date as described in the first column of the Table in Annex 7 to the Service Requirements;

"**Moderation**" means the Supplier assessment process designed to ensure that, where Approved Provider marking is undertaken in accordance with the Approved Assessment Strategy, such marking is scrutinised by a Moderator to ensure that it is in line with expected standards and Students' marks are adjusted where necessary, and "**Moderate**" will be construed accordingly;

"**Moderator**" means a moderator, external to the Approved Provider, employed or engaged by the Supplier to moderate marking undertaken by assessors employed or engaged by the Approved Provider of Students' performance in respect of the TQ Live Assessment Materials;

"**Month**" means a calendar month and "**Monthly**" shall be interpreted accordingly;

"**National Insurance**" means contributions required by the National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

"**Occupation**" means a set of jobs where the main tasks and duties are characterised by a high degree of similarity, where a "job" is a role connected to a specific employment contract in a workplace;

"**Occupational Map**" means, for each Route, a map which groups Occupations according to where there is a requirement for shared technical knowledge, skills, and behaviours, and identifies the Occupations for which Standards exist;

“**Occupational Specialist Component**” means each occupational specialist component of the TQ as referred to in the Outline Content;

“**Ofqual**” means the Office of Qualifications and Examinations Regulation, a statutory body created under the Apprenticeships, Skills, Children and Learning Act 2009, as amended by the Education Act 2011, to regulate qualifications, examinations and assessments in England;

“**Ofqual Recognition**” means recognition of the Supplier by Ofqual in respect of the TQ under section 132 of the Apprenticeships, Skills, Children and Learning Act 2009;

“**Ongoing Development Services**” shall have the meaning given in paragraph 2.3 of Part 1 of the Service Requirements;

“**Operate**” in relation to a qualification means to provide the Services or a material part of the Services, or services replacing the Services or a material part of the Services, or of an equivalent character to the Services or a material part of the Services in relation to any other qualification (whether a TQ or not); and “**Operation**” and other cognate terms shall have a corresponding meaning;

“**Operational Delivery Report**” means the report referred to in the third row of the first column in the Table in Annex 9 to the Service Requirements and containing the information set out in the third row of the second column of that Table;

“**Ordinary Exit**” means any termination of this Contract (other than an Early Exit) that occurs as a result of the expiry of the Contract on the Expiry Date (as extended by any Extension Period);

“**Outline Content**” means the outline content for the TQ developed by the T Level Panel at Annex 3 to the Service Requirements, as amended, supplemented and/or replaced from time to time;

“**Parliament**” takes its natural meaning as interpreted by Law;

“**Party**” means the Authority or the Supplier and “**Parties**” means both of them where the context permits;

“**Pathway**” means a sub-set of a Route, which groups common sets of Occupations into a number of occupational clusters together;

"**Performance Monitoring Methodology**" means the required evidence and measurement methodology that is to be applied by the Supplier to assess its performance of the relevant part of the Services (including the supply of any Products) to which the KPI in question relates, as such evidence and measurement methodology are set out in the fifth and sixth columns (respectively) of the Table attached at Annex 1 to Schedule 15 (*Monitoring of Performance*);

"**Performance Monitoring Period**" means the period set out against the relevant KPI in the fourth column of the Table attached at Annex 1 to Schedule 15 (*Monitoring of Performance*);

"**Performance Review Meeting**" shall have the meaning given in paragraph 3.2 of Schedule 15 (*Monitoring of Performance*);

"**Personal Data**" means "personal data" (as defined in the GDPR) that are processed under this Contract;

"**Portability Purposes**" means in order:

(a) to secure a smooth transition to a Skilled Future Supplier;

(b) to enable the Authority to procure a Skilled Future Supplier (including inviting competition and/or tenders), and for a potential Skilled Future Supplier to compete openly and effectively in any future competition or tender for, delivery and/or Operation of the TQ currently delivered by the Supplier and/or a Replacement TQ;

(c) to enable a Skilled Future Supplier to deliver and/or Operate the TQ and/or a Replacement TQ;

(d) to enable the Authority and/or any Skilled Future Supplier to carry out or have carried out any Continuing Activities, and/or

(e) to enable a Skilled Future Supplier to supply, to Providers, the TQ and/or Replacement TQ and sufficient information and materials (including Support Materials) for Providers to deliver the TQ in a Transparent manner;

"**Post-Results Services**" means the Services described in and/or provided pursuant to paragraph 9 of Part 1 of the Service Requirements, including the Additional Services;

Pre-Delivery Phase – The period between the Approval and Accreditation of the TQ and the first teaching of the TQ by Providers, being the period during which Supplier and Providers prepare for delivery.

"**Prescribed Person**" means a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 5 October 2019, available online at: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies;

"**Processor**" has the same meaning as in the GDPR and "**Processing**" and "**Processed**" shall be interpreted accordingly;

"**Product**" means each product listed in the first column of the Table in Part 3 of the Service Requirements;

"**Product Description**" means the description of the Authority's minimum requirement for the relevant Product set out in the second column of the Table in Part 3 of the Service Requirements, together with such further information, data and/or content as should reasonably be expected by the Supplier having regard to the Authority's requirements under this Contract and the Supplier's obligations under clause 3.1 (*How the Services must be supplied*);

"**Prohibited Acts**" means:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or any other public body 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 this Contract; or

(c) committing any offence:

(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or

(ii) under legislation or common law concerning fraudulent acts; or

(iii) defrauding, attempting to defraud or conspiring to defraud the Authority or other public body; or

(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

"**Provider**" means an organisation that has a grant agreement and/or a contract in place with the ESFA to provide qualifications to Students or that provides such services on a privately funded basis;

"**Provider Approval**" means approval of the Eligible Provider in accordance with clause 7.1 (*Interaction with Providers*);

"**Provider Approval Criteria**" means the approval criteria referred to in, and meeting the requirements of, the Product Description for the Provider Approval Criteria;

"**Provider Contract**" means a contract between an Approved Provider and the Supplier in respect of the TQ meeting the requirements set out in Schedule 17 (*Provider Contract requirements*);

"**Provider Services**" means the Services, other than the Initial Development Services and the Ongoing Development Services;

"**Rate Card**" means the Supplier's rate card as set out in Schedule 6 (*Pricing Schedule*)*;*

"**Reasonable Adjustments**" shall have the meaning given in SR 2.4 of Service Requirement 2 (as defined in the Service Requirements);

"**Recipient Party**" means the Party which receives or obtains directly or indirectly Confidential Information;

“**Regulated**” means the regulation by Ofqual of a qualification which has been Accredited and “**Regulation**” shall be authorised accordingly;

“**Regulations**” means the Concession Contracts Regulations 2016;

“**Relevant Competence**” means being a reasonably skilled and competent Awarding Organisation with access to appropriate tools, systems and platforms to operate technical qualifications;

“**Relevant Employees**” means those employees whose contracts of employment transfer with effect from the Relevant Transfer Date to the Authority or a Replacement Supplier by virtue of the application of TUPE;

“**Relevant Requirements**” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

“**Relevant Transfer**” means a transfer of employment to which TUPE applies;

“**Relevant Transfer Date**” means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

“**Reminder Notice**” means a written notice sent in accordance with clause 4.8 (*Pricing and payments*) given by the Supplier to the Authority providing notification that payment has not been received on time, which must be addressed to the Authority Authorised Representative, must set out the sum due, must reference this Contract and clause 4 (*Pricing and payments*) and attach a copy of the relevant valid invoice;

“**Replacement Subcontractor**” means a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);

“**Replacement Services**” means any services which are substantially similar to any of the Services (including the supply of any Products) and which the Authority receives in substitution for any of the Services, whether those services are provided by the Authority internally and/or by any third party;

“**Replacement Supplier**” means any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time, or where the Authority is providing Replacement Services on its own account, shall also include the Authority;

"**Replacement TQ**" means a technical education qualification forming part of the T Levels Programme to replace either: (i) the TQ which is the subject of this Contract; or (ii) the equivalent technical qualification which is the subject of a contract with a Future Supplier;

"**Request for Information**" means a request for information or an apparent request for information relating to this Contract or an apparent request for such information under the FOIA or the EIRs;

"**Required Insurances**" means the insurances that must be held by the Supplier as required by the Authority meeting the requirements set out in Schedule 19 (*Required Insurances*);

"**Resource Plan**" means the Resource Plan prepared by the Supplier as part of the Supplier's Response in relation to the Supplier Staff that shall be utilised (and the manner in which such Supplier Staff shall be utilised) by the Supplier in the performance of the Services and which, as at the Effective Date, is set out in Schedule 3 (*Implementatio*n), as such plan is, subject to paragraph 2.5 of Part 1 of the Service Requirements, developed and amended from time to time to fully meet the requirements of the Product Description for the "Resource Plan";

"**Re-Submission**" shall have the meaning given in clause 5.12.2(i) (*Developing the TQ and achieving IfATE Approval and Accreditation*);

"**Risk Register**" means the risk register referred to in, and meeting the requirements of, the Product Description for the Risk Register;

"**Route**" means the broadest category of Occupations in an Occupational Map, typically covering an industrial area;

"**Route Panel**" means the Authority's panel responsible for managing the development of the Outline Content, details of which can be found at https://www.gov.uk/government/publications/t-level-panels-membership;

"**Scheme of Assessment**" means the scheme of assessment referred to in, and meeting the requirements of, the relevant part of the Product Description for the TQ Specification;

“**Security Policy**” means the Authority's security policy, in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;

“**Serious Fraud Office**” means the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;

“**Services**” means the services as described in the Service Requirements (including the Additional Services);

“**Service Failure**” shall have the meaning given in paragraph 2.2 of Schedule 15 (*Monitoring of Performance*);

“**Service Requirements**” means the Authority’s requirements for the Services (including the supply of the Products) as set out in Schedule 2 (*Service Requirements*);

“**Service Transfer**” means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;

“**Service Transfer Date**” means the date of a Service Transfer;

“**Skilled Future Supplier**” means a Future Supplier with Relevant Competence;

“**Special Consideration**” shall have the meaning given in SR 2.5 of Service Requirement 2 (as defined in the Service Requirements);

“**Specific Change in Law**” means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Services and/or the Products and/or the performance of this Contract is not reasonably foreseeable at the Effective Date. Any change in any Condition of Recognition shall not be a Specific Change in Law;

“**Specification of Content**” means the specification of the content referred to in, and meeting the requirements of, the relevant part of the Product Description for the TQ Specification;

“**Staffing Information**” means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all

applicable provisions of the Data Protection Legislation), but including in an anonymised format:

(a) their ages, dates of commencement of employment or engagement, gender and place of work;

(b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;

(c) the identity of the employer or relevant contracting Party;

(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;

(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;

(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

(j) any other "**employee liability information**" as such term is defined in regulation 11 of TUPE;

"**Stakeholders**" means the Authority, the Department, ESFA, Ofqual, Providers, Employers and members of the Route Panels;

"**Standards**" means the description of the Occupation and the outcomes (knowledge, skills and behaviours) which a Student will be expected to attain to successfully achieve competence in that Occupation, as approved and published by the Authority;

"**Storage Media**" means the part of any device that is capable of storing and retrieving data;

"**Student**" means an individual undertaking (or who wishes to undertake) a formal programme of study with an Approved Provider for the T Level of which the TQ forms part;

"**Student Information**" means information or data relating to an individual Student whether or not the Student can be identified from that information or data;

"**Student Related Data**" means any information or data relating to Students (including any Student Information) and/or any Provider which is generated and/or acquired by and/or otherwise comes into the possession of the Supplier and/or any Supplier Staff as a result of the performance of the Supplier's obligations under this Contract;

"**Sub-Contract**" means any contract or agreement (or proposed contract or agreement), pursuant to which a third party:

(a) provides the Services and/or supplies any Products (or any part of them) and/or performs the whole or any part of this Contract;

(b) provides facilities or services necessary for the provision of the Services and/or the supply of any Products (or any part of them) and/or the performs the whole or any part of this Contract; and/or

(c) is responsible for the management, direction or control of the provision of the Services and/or supply of any Products (or any part of them) and/or the performance of the whole or any part of this Contract;

"**Subcontractor**" means any person other than the Supplier (and/or an Assessor who is self-employed or who provides services to the Supplier through that Assessor's own personal service company), who is a party to a Sub-Contract and the servants or agents of that person;

"**Submission**" means, in respect of the relevant Milestone, the Products set out against that Milestone in the third column of the Table in Annex 7 to the Service Requirements;

“**Submission Date**” means, in respect of the relevant Milestone, the date set out against that Milestone in the second column of the Table in Annex 7 to the Service Requirements;

“**Submission Issues Log**” means the issues log referred to in, and meeting the requirements of, the Product Description for the Submission Issues Log;

“**Subsequent Transfer**” has the meaning given in paragraph 8.1 of Schedule 12 (*Exit Management*);

“**Supplier Authorised Representative**” means the person referred to in Schedule 20 as such or the representative appointed by the Supplier from time to time in relation to this Contract as notified in writing (which may, in the case of this specific notification, be by email only) to the Authority;

“**Supplier Personnel**” means all employees of the Supplier (and any subcontractor) who are wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services including the development of the Products;

“**Supplier Staff**” means all directors, officers, employees, agents, consultants and contractors of the Supplier (including any Assessor who is self-employed or who provides services to the Supplier through that Assessor’s own personal service company), any Subcontractor engaged in the performance of the Supplier's obligations under this Contract and any company or organisation noted in the Supplier’s Tender as forming part of the consortium which submitted the Supplier’s Tender (“**Consortium Member**”) and all directors, officers, employees, agents, consultants and contractors of any such Subcontractor and/or any such Consortium Member engaged in the performance of the Supplier's obligations under this Contract;

“**Supplier's Final Supplier Personnel List**” means a list provided by the Supplier of all Supplier Personnel whose will transfer under TUPE on the Service Transfer Date;

“**Supplier’s Provisional Supplier Personnel List**” means a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

"**Supplier's Response**" means that part of the Supplier's Tender (including any method statements) which is at Schedule 5 (*Supplier's Response*);

"**Supplier's Tender**" means the Supplier's selection questionnaire and tender responses submitted in response to the Authority's advertisement in the Official Journal of the European Union (as referred to in the Recitals to this Contract) for a provider of the Services and supplier of the Products, as clarified in writing by the Supplier to the Authority prior to the date of this Contract in response to any request for clarification issued by the Authority;

"**Supplier Termination Event**" means:

(a) the Supplier (i) commits a material Default which is irremediable; or (ii) commits a material Default which is capable of remedy, but which has not been remedied by the Supplier within 30 days of being notified in writing to do so by the Authority;

(b) a Conflict of Interest arises in connection with the delivery of the Services (and/or the supply of the Products) to which no mitigation acceptable to the Authority can be promptly identified;

(c) where a right of termination is expressly reserved in this Contract;

(d) the Supplier is in material Default in respect of any data handling and/or security requirements set out in clauses 12, 17, 18 or Schedule 9 (*Data Handling and Security Management*) (where applicable);

(e) an Insolvency Event occurring in respect of the Supplier and/or the Guarantor;

(f) a change of Control of the Supplier and/or the Guarantor unless:

(i) the Authority has given its prior written consent (not to be unreasonably withheld or conditioned) to the particular change of Control, which subsequently takes place as proposed; or

(ii) the Authority has not served its notice of objection within 6 months of the later of the date on which the change of Control took place or the date on which the Authority was given notice of the change of Control;

(g) a material failure by the Supplier to comply with legal obligations in the fields of environmental, social or labour law;

(h) the departure from the Supplier of any of its senior officers or Key Personnel where the Authority has reasonable grounds to believe that such departure will impact or could potentially impact the delivery of the Services and/or the supply of any Products unless the Authority has not served its notice of objection within 6 months of the date on which the Authority was informed by the Supplier of such departure;

(i) the Supplier assigns, transfers or otherwise disposes of its rights, obligations and/or liabilities or seeks to assign, transfer or otherwise dispose of its rights, obligations and/or liabilities under the whole or any part of this Contract to a third party in breach of the terms of this Contract (including in breach of the requirements of paragraph 1 of Schedule 8 (*Supply Chain (including approved Subcontractors)*);

(j) the Supplier is in Default under clause 30.1 (*Preventing Fraud, Bribery and Corruption*);

(k) the Supplier provided incorrect or misleading information as part of the Supplier's Tender;

(l) the Supplier or any Subcontractor or Affiliate through its act or omission brings the Authority, the Department and/or the ESFA and/or the T Levels Programme into disrepute and/or diminishes the trust the public places in the Authority, the Department and/or the ESFA;

(m) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);

(n) an occurrence of any of the circumstances in regulations 44(1) (a) to (c) of the Regulations;

(o) this Contract has been substantially modified in breach of regulation 43(10) of the Regulations;

(p) the Authority discovers that the Supplier was in one of the situations in regulations 38(8) to 38(10) of the Regulations at the time this Contract was awarded;

(q) the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union ("**TFEU**") to declare that this Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations;

(r) a Critical Service Failure occurs; or

(s) the Supplier fails to comply with clause 34.2 (*Tax*) or fails to provide details of steps being taken and mitigating factors pursuant to clause 34.2 (*Tax*) which in the reasonable opinion of the Authority are acceptable;

"**Support Materials**" means teaching support materials intended for a Provider or Student audience, such as textbooks, and any other materials which the Authority agrees in writing to be Support Materials;

"**Target Service Level**" means the target performance level set out against the relevant KPI in the third column of the Table attached at Annex 1 to Schedule 15 (*Monitoring of Performance*);

"**Technical Qualifications Explanatory Note**" means an explanation of TQs, their purpose and how they are delivered;

"**Term**" means the period commencing on the Effective Date and ending on the End Date;

"**Termination Notice**" means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;

"**Third Party**" means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Effective Date;

"**Third Party IPR**" means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Services and/or supplying the Products;

"**TQ**" means the technical education qualification element of the T Level in respect of the Pathway that is (amongst other things) designed, developed and delivered under this Contract;

"**TQ Assignment and Licence**" means the assignment and licence in respect of certain Intellectual Property Rights in relation to the TQ in the form set out in Schedule 14 (*Form of Assignment and Licence*);

"**TQ Change**" means any change or variation to the content of the TQ;

"**TQ Content Updating Schedule**" means the schedule of dates set out in Annex 6 to the Service Requirements (or such other dates as may be agreed by the Authority from time to time) applicable to the relevant Inclusive TQ Change or Exclusive TQ Change (as the case may be);

"**TQ Core Component**" means the core component of the TQ referred to in the Outline Content;

"**TQ Deliverables**" means:

(a) in the period prior to the Supplier making available the Grade Standard Exemplification Materials referred to in paragraph 6.2.2 of Part 1 of the Service Requirements, the Approved Initial TQ Deliverables; and

(b) in the period following the Supplier making available the Grade Standard Exemplification Materials referred to in paragraph 6.2.2 of Part 1 of the Service Requirements:

    (i) the Approved Initial TQ Deliverables (other than the Guide Standard Exemplification Materials); and

    (ii) the Grade Standard Exemplification Materials,

in each case, as amended in accordance with this Contract;

"**TQ Development Meeting**" shall have the meaning given in clause 5.4 (*Developing the TQ and achieving IfATE Approval and Accreditation*);

"**TQ Live Assessment Materials**" shall have the meaning given in Schedule 2 (*Service Requirements*);

"**TQ Specification**" means the Specification of Content, the Scheme of Assessment and the Approved Provider's Quality Assurance Process;

"**TQ Specimen Assessment Materials**" means the specimen assessment materials referred to in, and meeting the requirements of, the Product Description for the TQ Specimen Assessment Materials;

"**T Level**" means the technical study programme known as a "T Level";

"**T Level Awarding Organisations**" shall have the meaning given in paragraph 1.1 of Schedule 4 (*Co-operation*);

"**T Level Branding Guidelines**" means the Authority's written guidelines prescribing the permitted form and manner in which the trade marks (the "*Mark*" as defined within the T Level Trade Mark Licence) may be used and setting out how the Supplier branding may be used in relation to materials used in the operation of the TQ or to promote the TQ, a copy of which is set out in the document entitled S16_T_Level_Branding_Guidelines, including any amendments or additions notified by the Authority to the Supplier from time to time, provided that the Authority shall where possible provide reasonable notice in writing to the Supplier of any proposed amendments or additions to such guidelines;

"**T Level Panel**" means the group of Employers, professionals and practitioners appointed to advise on the content of the T Level of which the TQ forms part;

"**T Level Trade Mark Licence**" means the trade mark licence granted pursuant to Schedule 16 (*Logos and Trademarks – T Level Trade Mark Licence*);

"**T Levels Programme**" means the programme of technical education in England managed by the Authority and known as "T Levels";

"**Transferable Contracts**" means Sub-Contracts, or other agreements which are necessary to enable the Authority or any Replacement Supplier to provide the Services and/or develop, maintain or supply the Products or the Replacement Services, including all relevant Documentation;

"**Transferring Supplier Employee**" means those employees whose contract of employment will be transferred to the Authority or a Replacement Supplier pursuant to TUPE on expiry or termination of this Contract;

"**Transition Period**" means the period from a Replacement Supplier commencing any aspects of development or delivery of the TQ to the End Date, eg from the point when the Replacement Supplier has been awarded a contract for provision of the TQ, but while this Contract remains in place for existing Students;

"**Transparency Information**" has the meaning given to it in clause 19 (*When information can be shared);*

"**Transparency Reports**" means: (i) the Management Information relating to the Services and performance of this Contract which the Supplier is required to provide to the Authority in accordance with the reporting requirements set out in the Service Requirements; and (ii) the output of any survey commissioned by the Authority in connection with the performance of the Supplier under this Contract;

"**Transparent**" means that Students and Employers will regard the TQ delivered by a Future Supplier as materially the same as the TQ delivered and operated by the (existing) Supplier;

"**TUPE**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law;

"**TUPE Information**" has the meaning given in paragraph 8.5 of Schedule 12 (*Exit Management*);

"**Variation**" means any variation or change to this Contract which is not an Inclusive TQ Change;

"**Variation Form**" means the form set out in Schedule 11 (*Change Management*);

"**VAT**" means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

"**Working Day**" means any day other than a Saturday or Sunday or public holiday in England and Wales.

Schedule 2

Service Requirements

The content for this Schedule is contained in a separate file at (insert file name)

Schedule 3

Implementation

The content for this Schedule is contained in a separate file at (insert file name)

Schedule 4

Co-operation

1 Objective of the joint arrangements

1.1 The Supplier shall cooperate, coordinate and seek to agree certain arrangements with all third party Awarding Organisations involved in the delivery of the technical education qualification element of each T Level forming part of the T Levels Programme ("**T Level Awarding Organisations**") from time to time with the aim of:

1.1.1 ensuring the quality, consistency, efficiency and effectiveness of the T Levels Programme as a whole; and

1.1.2 in the interest of Students and Providers, streamlining administration relating to the T Levels Programme.

1.2 The Supplier shall ensure that all activities carried out by it under this Schedule appropriately take into account the views of each T Level Awarding Organisation (including T Level Awarding Organisations appointed subsequent to the appointment of the Supplier) and do not risk or result in:

1.2.1 a disproportionate burden falling on any given T Level Awarding Organisation or on Providers; and/or

1.2.2 a disproportionate burden (whether by any act or omission on the part of the Supplier) on Providers and/or Students.

2 Joint arrangements

2.1 In particular, the Supplier shall (at its own cost):

2.1.1 attend a meeting convened by the Authority (on reasonable prior notice and at least once per calendar quarter) with all other T Level Awarding Organisations to discuss progress on coordination efforts including the activities set out below, and to make decisions relating to any outstanding areas of coordination;

2.1.2 in order to minimise the administrative burden on Providers, cooperate with all other T Level Awarding Organisations to coordinate and deliver an efficient method of both regular and ad hoc inspections (on an ongoing

basis) of the delivery by Approved Providers of the technical education qualification element of each T Level, to ensure that the relevant Approved Providers continue to meet the requirements of their Provider Approval by the Supplier and equivalent approval by other T Level Awarding Organisations, provided always that where, as a result of such cooperation and/or coordination it is necessary for the Supplier to amend and/or modify that part of the Supplier's Response to which the provisions of paragraph 3.1.2 of Part 1 of the Service Requirements apply, then the Supplier shall obtain Approval to such amendment and/or modification;

2.1.3 coordinate and seek to agree with all other T Level Awarding Organisations (at the earliest possible date) common rules and guidance applicable to the teaching and assessment of and provision of Post-Results Services for the technical education qualification element of each T Level with the aim of having aligned rules, guidance and Post-Results Services, where appropriate, across the T Levels Programme, addressing topics such as conducting examinations;

2.1.4 share information between T Level Awarding Organisations as necessary (subject to the relevant obligations on confidentiality in this Contract) to:

(i) facilitate the joint arrangements anticipated by this Schedule;

(ii) enable transfer of achievement of the TQ Core Component of a T Level between T Level Awarding Organisations; and

(iii) enable results analysis in respect of the Route of which the TQ forms part;

2.1.5 where possible, utilise systems in the delivery of the Services which are interoperable with those utilised by other T Level Awarding Organisations so as to facilitate the portability of the Services to any Future Supplier;

2.1.6 coordinate and seek to agree with all other T Level Awarding Organisations pre-assessment access arrangements for T Levels to ensure equivalence of approach between T Level Awarding Organisations;

2.1.7 adopt a common process and, where possible, system, to that used by other T Level Awarding Organisations for applications for access

arrangements for T Levels to be made and considered for the benefit of Students;

2.1.8 coordinate and seek to agree with all other T Level Awarding Organisations a common process and approach and, where possible, system to that used by other T Level Awarding Organisations, to manage and/or facilitate Reasonable Adjustments and/or applications for Special Consideration to ensure equivalence of approach between T Level Awarding Organisations;

2.1.9 seek to agree between T Level Awarding Organisations a Key Dates Schedule, such schedule to be developed in consultation with the Department, GCE Awarding Organisations, Providers and UCAS and to be Approved by the Authority;

2.1.10 attend regular meetings (at least once per calendar month unless otherwise notified by the Authority) with all other T Level Awarding Organisations to discuss operational issues in relation to the T Level Programme; and

2.1.11 where notified by the Authority, work with other T Level Awarding Organisations responsible for TQs in the same Route with the aim to, where appropriate, harmonise the common TQ Core Component across that Route.

3 Disputes relating to joint arrangements

3.1 In the event the Supplier contends that it is unable to meet its obligations under this Schedule as a result of the action or inaction of one or more third party T Level Awarding Organisation, the Supplier shall seek to resolve such matter with the relevant T Level Awarding Organisation(s). In the event that the Supplier is unable to resolve such matter, having used its reasonable endeavours to do so, the Supplier shall promptly notify the Authority in writing with the relevant details including the steps taken to attempt to resolve the matter, and the Authority shall use its reasonable endeavours to promptly resolve such matter.

3.2 In the event that a third party T Level Awarding Organisation contends that it is unable to meet its joint arrangement obligations as a result of the action or inaction of the Supplier, then the Supplier shall comply with the reasonable instructions of the Authority in relation to such action or inaction.

3.3 Nothing in this Schedule (including any failure to agree any matters referred to in paragraph 2 of this Schedule) shall operate to reduce or otherwise diminish the Supplier's obligations and/or the Authority's rights under this Contract.

4 Reporting

4.1 The Supplier shall, on request by the Authority, promptly provide a written report to the Authority setting out its progress in achieving the joint arrangements set out in paragraph 2 of this Schedule.

Schedule 5

Supplier's Response

The content for this Schedule is contained in a separate file at (insert file name)

Schedule 6

Pricing Schedule

The content for this Schedule is contained in a separate file at (insert file name)

Schedule 7

Staff (including Key Personnel)

1 Staff – no transfer on Effective Date

1.1 The Parties agree that at the Effective Date, TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.

1.2 If any person who is an employee of the Authority or a Third Party claims, or it is determined, that their contract of employment has been transferred from the Authority or Third Party to the Supplier or a Subcontractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:

1.2.1 the Supplier will, within 7 days of becoming aware of the situation, give notice in writing to the Authority;

1.2.2 the Authority or Third Party may offer employment to such person within 28 days of the notification by the Supplier;

1.2.3 if such offer of employment is accepted, the Supplier or a Subcontractor shall immediately release the person from their employment;

1.2.4 if, after that period specified in paragraph 1.2.2 above has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party but was not accepted within a reasonable time, the Supplier or Subcontractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of that person and will (where relevant) be obliged to apply Fair Deal for Staff Pensions in respect of that person.

2 Staff – in the event of transfer on start Date

2.1 The Supplier shall procure that, if relevant, each of its Subcontractors shall comply with the provisions in this paragraph 2 as if references to the Supplier were to the Subcontractor.

2.2 Notwithstanding the provisions of paragraph 1 (*Staff – no transfer on Effective Date*), in the event that any employees of the Authority or a Third Party transfer to the Supplier or a Subcontractor pursuant to TUPE and are employed by the Supplier or Subcontractor in accordance with paragraph 1.2.4, the Authority shall (subject to paragraph 2.3) indemnify and keep indemnified the Supplier and any Subcontractor against any losses, except indirect losses, incurred by the Supplier and any Subcontractor in connection with any claim or demand by any such individuals arising out of the employment of any of them prior to the Effective Date.

2.3 The Supplier shall be liable for and indemnify and keep indemnified the Authority and any Third Party against any Employee Liability arising from or as a consequence of:

2.3.1 any proposed changes to terms and conditions of employment the Supplier or Subcontractor may consider making on or after the Effective Date; and

2.3.2 any failure by the Supplier to comply with its obligations under paragraph 1.2.4 of this Schedule.

3 Key Personnel

3.1 The Supplier shall ensure that the Key Personnel fulfil the Key Roles during the Term. The Annex to this Schedule 7 lists the Key Roles. remit and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.

3.2 The Authority can identify any further roles as being Key Roles and, following agreement on this by the Supplier (such agreement not to be unreasonably withheld or delayed) any relevant person selected to fill those Key Roles (and details of the role itself) shall be included on the list of Key Personnel in the Annex to this Schedule 7.

3.3 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Schedule 12 (*Exit Management*)) unless:

3.3.1 requested to do so by the Authority;

3.3.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;

3.3.3 the person's employment or contractual arrangement with the Supplier or a Subcontractor is terminated for material breach of contract by the employee; or

3.3.4 the Supplier obtains Approval (such Approval not to be unreasonably withheld or delayed).

3.4 The Supplier shall:

3.4.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);

3.4.2 ensure that any Key Role is not vacant for any longer than 10 Working Days;

3.4.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;

3.4.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services and/or supply of any Products; and

3.4.5 ensure that any replacement for a Key Role:

(i) has a level of qualifications and experience appropriate to the relevant Key Role; and

(ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

4 <u>Staff vetting</u>

4.1 For the purposes of this paragraph 4, "**Convictions**" means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act).

4.2 The Supplier shall ensure that all potential Supplier Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with Students or vulnerable persons (and/or access to data or information relating to such Students or vulnerable persons) are, to the extent permitted by Law:

4.2.1 questioned concerning their Convictions; and

4.2.2 required to obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) where required by Law,

before the Supplier engages the potential staff or persons in the provision of the Services.

4.3 The Supplier shall take all necessary steps to ensure that such potential staff or persons referred to in paragraph 4.2 obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.

4.4 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:

4.4.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with paragraph 4.2.1;

4.4.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with paragraph 4.2.2; or

4.4.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier under paragraph 4.2.2.

4.5 In addition to the requirements of paragraphs 4.1 to 4.4, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier shall:

4.5.1 comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;

4.5.2 ensure that it has no reason to believe that any member of Supplier Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and

4.5.3 ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to Students or any other person.

4.6 The Supplier shall ensure that the Authority is kept advised at all times of any member of the Supplier Staff who, subsequent to their commencement of employment as a member of the Supplier Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to Students or any other person. The Supplier shall only be entitled to continue to engage or employ such individual with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall immediately remove such individual from the Supplier Staff.

4.7 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in paragraphs 4.1 to 4.6 of this Schedule have been met.

4.8 For Supplier Staff appointed following the Effective Date who shall or may have access to IfATE Data, in addition to meeting its obligations under this paragraph 4, the Supplier shall carry out pre-employment screening meeting the HMG Baseline Personnel Security Standard (BPSS) or equivalent in accordance with Schedule 9 (*Data Handling and Security Management*).

Annex to Schedule 7

List of Key Personnel

The content for this Annex is contained in a separate file at (insert file name)

Schedule 8

Supply Chain (including approved Subcontractors)

1 Appointment of Key Subcontractors

1.1 Where the Supplier wishes to enter into a Key Sub-Contract or replace a Key Subcontractor, it must obtain Approval, such Approval not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its Approval to the appointment of a Key Subcontractor if it reasonably considers that:

1.1.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Services and/or the supply of the Products or may be contrary to the interests of the Authority and/or the TQ;

1.1.2 the proposed Key Subcontractor is unreliable and/or has not provided reasonable services to its other customers or clients;

1.1.3 the proposed Key Subcontractor employs unfit persons; or

1.1.4 the proposed Key Subcontractor should be excluded in accordance with clause 14.7 (*Ending or extending this Contract*).

1.2 The Authority confirms its Approval of the appointment of the Key Subcontractors listed in Annex 1 to this Schedule 8.

1.3 Except where the Authority has given its Approval otherwise, the Supplier shall ensure that each Key Sub-Contract shall include:

1.3.1 provisions which will enable the Supplier to discharge its obligations under this Contract;

1.3.2 a right for the Authority to enforce any provisions under the Key Sub-Contract which are capable of conferring a benefit upon the Authority;

1.3.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;

1.3.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the

Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority; and

1.3.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under this Contract:

(i) under clause 17 (*Data protection and information*);

(ii) under clause 19 (*When information can be shared*);

(iii) in respect of any obligation not to bring the Authority, the Department or the ESFA and/or the T Levels Programme into disrepute and/or otherwise diminish the trust that the public places in the Authority, the Department or the ESFA, as set out in clause 3.1.9 (*How the Services must be supplied*); and

(iv) in respect of the keeping of records and provision of information (including (as applicable) Management Information) in relation to that part of the Services being provided and/or those Products being supplied under the Key Sub-Contract.

1.4 The Supplier shall, as soon as reasonably practicable following a request by the Authority, provide a copy of any proposed Key Sub-Contract (and/or any Key Sub-Contract which it has entered into) to demonstrate compliance by the Supplier with its obligations under this paragraph 1.

2 <u>Subcontractor information</u>

2.1 If the Authority asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:

2.1.1 their name;

2.1.2 the scope of their appointment; and

2.1.3 the duration of their appointment.

Annex 1 to Schedule 8

Key Subcontractors

[***DN: Insert Lot Number at the Contract Award Stage. If the Supplier does not have any Key Subcontractors, delete the above text and state "Not Applicable"***]

The content for this Annex is contained in a separate file at (insert file name)

Schedule 9

Data Handling and Security Management

1 The Supplier shall maintain Cyber Essentials certification and shall operate an Information Security Management System in relation to the Services that is compliant with ISO 27001 (the International Standard for Information Security Management Systems) or an equivalent standard.

2 The Supplier shall have in place and maintain physical security, in line with the requirements outlined in ISO 27002 (the International Standard describing the Code of Practice for Information Security Controls), including entry control mechanisms (e.g. door access) to premises and sensitive areas.

3 The Supplier shall have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to IT systems to ensure only authorised personnel have access to IfATE Data.

4 The Supplier shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect IfATE Data, including: physical security controls; Good Industry Practice policies and processes; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions, operating systems, network devices and application software; user access controls; and the creation and retention of audit logs of system use.

5 The Supplier shall carry out and shall maintain records of appropriate technical risk assessments in respect of all aspects of the Supplier's handling of IfATE Data. The Supplier shall provide such records to the Authority on request and shall ensure that such records are capable of demonstrating to the Authority's reasonable satisfaction that appropriate procedures are in place to address any significant risks identified.

6 The Supplier shall ensure that IfATE Data is processed and stored in a manner which enables such IfATE Data to be identified and securely deleted when required. The Supplier shall ensure that IfATE Data which is not in electronic form is kept physically separate from the data of the Supplier and any of the Supplier's other customers.

7 Any IfATE Data transferred by the Supplier using electronic transfer methods across public space or cyberspace, including mail and courier systems, or third party provider

networks must be encrypted to an encryption standard meeting Transport Layer Security (TLS) 1.2 or later.

8 Storage of IfATE Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated requirement and shall be subject to paragraphs 9 and 10 below.

9 Any portable removable media (including pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process IfATE Data to deliver or support the Services, shall be under the control and configuration management of the Supplier, shall be necessary to deliver the Services and shall be encrypted to the Advanced Encryption Standard (AES) 256 or equivalent.

10 All portable IT devices (including laptops, tablets, smartphones or other devices, such as smart watches) which handle, store or process IfATE Data to deliver and support the Services, shall be under the control and configuration management of the Supplier, shall be necessary to deliver the Services and shall be full-disk encrypted to the Advanced Encryption Standard (AES) 256 or equivalent.

11 Whilst in the Supplier's care, all removable media and hardcopy paper documents containing IfATE Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder, a professional secure disposal organisation or an equivalent secure disposal method.

12 When necessary to hand-carry removable media and/or hardcopy paper documents containing IfATE Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This paragraph shall apply equally regardless of whether the material is being carried inside or outside of the Supplier's premises.

13 The Supplier shall ensure throughout the Term that it is in a position (and is able to demonstrate to the Authority's reasonable satisfaction that it is in a position) to provide a complete copy of all IfATE Data at the Authority's request at any time and on the termination or expiry of the Contract.

14 At the end of the Contract or in the event of equipment failure or obsolescence, all IfATE Data, in either hardcopy or electronic format, that is physically held or logically

stored on the Supplier's IT infrastructure must be securely sanitised or destroyed and accounted for in a manner that ensures that the relevant data is not retrievable using normally available methods and/or tools and which allows the Supplier to demonstrate its compliance with this paragraph 14 at the Authority's request. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, then the Supplier shall protect the Authority's information and data until such time that it can be securely cleansed or destroyed.

15 Access by Supplier Staff to IfATE Data shall be confined to those individuals who have a "need-to-know" in order to carry out their role and have undergone pre-employment screening appropriate to the nature and sensitivity of the IfATE Data and, for Supplier Staff appointed following the Effective Date, have undergone pre-employment screening which is at least equivalent to the HMG Baseline Personnel Security Standard (BPSS).

16 All Supplier Staff who handle IfATE Data must have annual awareness training in protecting information.

17 The Supplier shall have in place robust business continuity arrangements and processes including IT disaster recovery plans and procedures to ensure that the delivery of the Services is not adversely affected in the event of an incident (as set out in the Supplier's Business Continuity Plan). An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the Services. Upon request from the Authority, the Supplier will provide evidence of the effectiveness of their business continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Supplier has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.

18 Any suspected or actual breach of the confidentiality, integrity or availability of IfATE Data being handled in the course of providing the Services, or any non-compliance with security standards pertaining to the Services, shall be investigated immediately and escalated to the Authority. The Supplier shall maintain audit records and event logs in respect of any such security events in accordance with documented retention policies approved by the Authority.

19 The Supplier shall ensure that any IT systems and hosting environments that are used to handle, store or process IfATE Data shall be subject to independent penetration

testing, to take place within the three month period immediately prior to the start of each Academic Year, to test the security of such systems and hosting environments, by a penetration testing provider that is CHECK, CREST or TIGER scheme approved. The Supplier shall include a summary of the findings of such penetration testing and the details of any necessary remedial work carried out in the annual penetration testing report required under Schedule 2 (*Service Requirements*). In the event of security issues being identified which are ranked as "high" importance or above, the Supplier shall notify the Authority as soon as reasonably possible (and in any event within 2 Working Days), shall promptly remedy such issues, and shall promptly carry out a follow-up remediation test at the Authority's request.

20 The Supplier shall ensure that any consumer-off-the-shelf software used in relation to the IfATE Data or otherwise to deliver the Services is kept up-to-date and subject to mainstream support.

21 The Supplier shall procure and implement security patches to address any vulnerabilities in the IT systems used to handle the IfATE Data or to deliver the Services, within a period of time appropriate to the risk the vulnerability presents.

22 The Supplier shall not without the prior written agreement of the Authority store any IfATE Data outside of the UK or perform any form of IT management, support or development function from outside the UK. The Supplier shall provide the Authority with full details of any proposal to do so and shall not go ahead with any such proposal without the prior written agreement of the Authority.

23 The Supplier shall undergo appropriate security assurance activities as may reasonably be determined by the Authority from time to time and shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation. This will include obtaining any necessary professional security resources required to support the Supplier's security assurance activities.

24 The Supplier shall have in place and maintain a secure system for data exchange sufficient to enable the Supplier to make all required Management Information and Ofqual information returns in relation to the TQ and the Services.

25 The Supplier shall ensure that any of their Subcontractors, third party suppliers or partners (including any Assessor who is self-employed or who provides services to the Supplier through that Assessor's own personal service company) who could potentially access any IfATE Data meet all of the requirements in this Schedule as they apply to

the Supplier and shall contractually enforce such requirements onto any such Subcontractors, third party suppliers or partners (including any Assessor who is self-employed or who provides services to the Supplier through that Assessor's own personal service company).

Schedule 10

Business Continuity

The content for this Schedule is contained in a separate file at (insert file name)

Schedule 11

Change Management

Variation Form

Variation Form / change control note (CCN) No:	**Contract:**	**Effective Date of Variation:**
Initiated by: Change requested by [Supplier **OR** Authority]		
Date of request:		
Period of validity: This Variation Form is valid for acceptance until [DATE].		
Reason for change:		
Description and impact of the change (including to delivery and performance):		
Time limit for Impact Assessment:		
Required amendments to wording of Contract or Schedules:		
Adjustment to Charges resulting from change:		
Supporting or additional information:		

SIGNED ON BEHALF OF THE AUTHORITY	**SIGNED ON BEHALF OF THE SUPPLIER**
Signature:	Signature:
Name:	Name:
Position:	Position:
Date:	Date:

Schedule 12

Exit Management

PART A: GENERAL

1 Exit Plan

1.1 The Supplier shall, within two Months after the Effective Date, deliver to the Authority an initial Exit Plan (adopting and updating the form of plan at Annex 1 to \) that:

1.1.1 sets out the Supplier's proposed methodology for achieving an orderly transfer of the Services to the Authority and/or its Replacement Supplier on the expiry or termination of this Contract;

1.1.2 complies with the requirements set out in paragraph 1.3 below; and

1.1.3 is otherwise reasonably satisfactory to the Authority.

1.2 The Authority shall consider the initial Exit Plan and shall notify the Supplier of any amendments it believes are necessary. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 30 Working Days of the Authority requesting any amendments, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

1.3 The Exit Plan shall set out, as a minimum:

1.3.1 how the Exit Information will be obtained;

1.3.2 separate mechanisms for dealing with Ordinary Exit, Early Exit and Emergency Exit, with the provisions relating to Early Exit and Emergency Exit prepared on the assumption that the Supplier may be unable to provide the full level of assistance that is required by the provisions relating to Ordinary Exit, and to include in the case of Early Exit and Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;

1.3.3 the management structure to be employed during the transfer of the Services in the event of each of an Ordinary Exit, an Early Exit and an Emergency Exit;

1.3.4 a detailed description of the transfer processes, including a timetable, applicable in the case of each of an Ordinary Exit, an Early Exit and an Emergency Exit;

1.3.5 steps the Supplier will take to mitigate the potential for and/or costs of any redundancies (if applicable) of any individual employed by either the Supplier or any Subcontractor in the provision of the Services in the event of each of an Ordinary Exit, an Early Exit and an Emergency Exit; and

1.3.6 without prejudice to the Supplier's obligations elsewhere in this Schedule, the scope of any further termination-related assistance that may reasonably be required by the Authority to achieve an orderly transfer of the Services to the Authority and/or its Replacement Supplier in the case of each of an Ordinary Exit, an Early Exit, and an Emergency Exit.

2 Updates to the Exit Plan

2.1 The Supplier shall review and (if appropriate) update the Exit Plan:

2.1.1 following IfATE Approval;

2.1.2 at least once every Academic Year;

2.1.3 whenever there is a material change to the Services (including any TQ Change); and

2.1.4 within 10 Working Days of the service of a Termination Notice,

and consider what changes (if any) are necessary to reflect the current state of the Services and the TQ at the relevant point in time and to ensure that the Exit Plan meets the requirements of this Schedule and is capable of being implemented promptly.

2.2 Following each review required under paragraph 2.1, the Supplier shall submit for the Authority's approval a revised draft of the Exit Plan showing any proposed amendments necessary to ensure the Exit Plan continues to meet the requirements of this Schedule. The Authority shall consider each such revised draft and shall notify the

Supplier of any further amendments it believes are necessary. The Supplier shall incorporate all reasonable amendments requested by the Authority in a further revised draft of the Exit Plan. If the Parties are unable to agree the contents of a revised Exit Plan within 30 Working Days of the Authority requesting any amendments, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

2.3 When the revised Exit Plan is agreed, it shall be signed by both Parties, following which it shall supersede any previous versions of the Exit Plan.

3 Provision of Exit Information

3.1 The Supplier shall provide to the Authority the Exit Information (as defined in paragraph 3.2 below) in an appropriate documentary form:

3.1.1 within one Month of the date 12 Months prior to the Expiry Date (as extended by any Extension Period);

3.1.2 as soon as reasonably practicable after (and in any event within one Month of) the date of service of a Termination Notice by either Party; and

3.1.3 at the Authority's request on reasonable notice at any point during the Term provided that the Authority shall not make such a request more than twice in any 6 month period.

3.2 Subject to paragraph 3.3, the information to be provided under paragraph 3.1 shall include all such information as is reasonably necessary and sufficient to enable the Authority and/or any Replacement Supplier to take over and provide the Services and the TQ following the expiry or termination of this Contract (the "**Exit Information**"), and in particular shall include:

3.2.1 details of all Supplier third party contracts or licences used for the provision of the Services (including any Transferable Contracts) including, where applicable, whether such contracts or licences are used by the Supplier to provide services to other customers of the Supplier, save to the extent these details are subject to an obligation of confidence to a third party that is not part of the Supplier's corporate group;

3.2.2 details of all the Intellectual Property Rights used in the provision of the Services or developed as part of the Services;

3.2.3 details of any IfATE Data that is in the possession or control of the Supplier or any Subcontractors or that is otherwise used in the provision of the Services;

3.2.4 details of any Key Materials and Ancillary Materials;

3.2.5 details of any ongoing projects or other work carried out under this Contract; and

3.2.6 in respect of all individuals engaged in providing the Services, such information as the Authority may reasonably request (subject, at all times, to any relevant Data Protection Legislation), including in an anonymised format full and accurate details of:

(i) the total number of such individuals;

(ii) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;

(iii) their dates of commencement of employment or engagement;

(iv) their remuneration and other benefits;

(v) their other terms and conditions of employment, as applicable (including their relevant contractual notice periods and any other terms relating to termination of employment, redundancy procedures and redundancy payments);

(vi) their job titles and job descriptions;

(vii) details of any such individuals on long term sickness absence, parental leave, maternity leave, paternity leave or other authorised long-term absence;

(viii) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

(ix) details of who reports to each individual and to whom each individual reports; and

(x) any collective agreements that apply to them; and

3.2.7 any other material or information reasonably requested by the Authority.

3.3 The Supplier shall not be required to provide in the Exit Information any information that has already been provided to the Authority as part of the Management Information, unless that information has become outdated and/or inaccurate since it was last provided as part of the Management Information.

3.4 Once provided in accordance with paragraph 3.1 above, the Supplier shall provide any updates to the Exit Information to the Authority:

3.4.1 on a Monthly basis (following any Month where there are changes to the Exit Information) following the earliest of the dates referred in to paragraphs 3.1.1 and 3.1.2; and

3.4.2 as soon as reasonably practicable following (and in any case within one Month of) the Authority's reasonable request, provided that the Authority shall not make such a request more than twice in any 6 Month period.

3.5 The Exit Information shall be deemed to be Confidential Information. The Authority shall only use the Exit Information for the Exit Purposes as defined in paragraph 4.2 below, and shall ensure that such Exit Information is only disclosed within the Authority to those individuals who need to know the Exit Information for the Exit Purposes. The Authority may disclose the Exit Information to any Replacement Supplier for the Exit Purposes.

4 Provision of assistance on termination or expiry

4.1 In connection with any expiry or termination of this Contract for whatever reason, the Parties shall perform their respective obligations as stated in the Exit Plan, and without prejudice to the generality of this obligation:

4.1.1 the Supplier shall provide to the Authority and/or any Replacement Supplier (as applicable) all reasonable assistance requested by the Authority for the transfer of the Services and the TQ from the Supplier to the Authority and/or the Replacement Supplier (as applicable) with the minimum of disruption and inconvenience to Students and Stakeholders;

4.1.2 the Supplier shall provide the Authority with:

(i) a complete copy of all Key Materials;

(ii) a complete copy of any Ancillary Materials that have not previously been provided or that have been updated since they were last provided; and

(iii) at the Authority's request, further copies of any Ancillary Materials previously provided;

4.1.3 the Supplier shall provide the Authority or, at the Authority's request, any Replacement Supplier, with a copy of all IfATE Data that is in the possession or control of the Supplier or any Subcontractors or that is otherwise used in the provision of the Services;

4.1.4 the Supplier shall provide any additional information reasonably required by the Authority to understand and access any data or information provided by the Supplier; and

4.1.5 at the Authority's request, the Supplier shall enter into a period of parallel running of the Services alongside the running of any Replacement Services and shall use its reasonable endeavours to facilitate a phased transfer of the Services to the Authority and/or any Replacement Supplier (but only where that phased transfer does not impact on the Supplier's ability to deliver the Services that it remains responsible for providing under this Contract).

4.2 Without prejudice to the terms of clause 12 (*Intellectual Property Rights*), the Supplier hereby grants to the Authority a worldwide, royalty free licence (with a right to sublicense to any Replacement Supplier) to use any information, data, software or materials referred to in the Exit Information or provided by the Supplier or its Subcontractors in the performance of the Supplier's obligations under this paragraph 4. The Authority and any Replacement Supplier sub-licensees may only use such information, data, software and materials for such purposes and for such period as is reasonably necessary to ensure an orderly transfer of the Services to the Authority or a Replacement Supplier that minimises disruption and inconvenience to Students and Stakeholders ("**Exit Purposes**").

4.3 In the event of an Emergency Exit, the Supplier shall grant or procure the grant to the Authority and any Replacement Supplier the right during any Transition Period and on

termination of this Contract to access and use the IT systems used by the Supplier (including software and databases) insofar as such access and use is necessary in order to enable an orderly transfer of the Services to the Authority and/or its Replacement Supplier on the termination of this Contract, and the Supplier shall provide such access, information and credentials as are required for the Authority and/or Replacement Supplier to access such systems for such purposes.

5 Transferable Contracts

5.1 During the period beginning 6 Months prior to the End Date or following the service of a Termination Notice by either party, the Supplier shall not without the Authority's prior written consent terminate, enter into or vary:

5.1.1 any Transferable Contract; or

5.1.2 any other Sub-Contract, except to the extent such change does not or will not affect the provision of the Services or the Charges.

5.2 On expiry or termination of this Contract for any reason, the Supplier shall at the Authority's request assign, novate or procure the novation of the Supplier's interest in the Transferable Contracts to the Authority or a Replacement Supplier.

6 Costs of assistance on termination or expiry

6.1 Save in respect of the provision of the Services (for which the Supplier shall continue to be remunerated in accordance with Schedule 6 (*Pricing Schedule*)):

6.1.1 where the Contract is terminated by the Authority as a result of a Supplier Termination Event under clause 14.3 (*Ending or extending this Contract*) or where the Contract is wrongfully terminated or repudiated by the Supplier, the Parties' costs of compliance with paragraph 4 shall be borne by the Supplier; and

6.1.2 where the Contract is terminated by the Supplier under clause 14.5 (*Ending or extending this Contract*) or where the Contract is wrongfully terminated or repudiated by the Authority, the Parties' costs of compliance with paragraph 4 shall be borne by the Authority.

6.2 References to "**costs**" in paragraph 6.1 shall be deemed to refer only to direct, reasonable and verifiable costs (which, in the case of the Supplier, shall be calculated

in accordance with the Rate Card). Both Parties shall use all reasonable endeavours to mitigate such costs and, to the extent reasonably practicable, each Party shall notify and obtain the consent of the other Party before incurring any costs for which the other Party would be liable under paragraph 6.1.

6.3 Subject to paragraph 6.1, each Party shall bear its own costs of compliance with this Schedule.

7 General

7.1 The Supplier warrants to the Authority that all the information provided under paragraphs 3 and 4 shall conform to the requirements of this Contract or, where there are no such requirements, shall be prepared in accordance with Good Industry Practice.

7.2 Except as otherwise stated in the Exit Plan:

7.2.1 the obligations in paragraphs 4 and 5 shall be in addition to, and not in substitution for, the provision of the Services; and

7.2.2 subject to the continued payment of the Charges in accordance with the terms of this Contract, the Supplier shall continue to provide, and the Authority shall continue to receive, the Services during the Term in accordance with the terms and conditions of this Contract.

PART B: EMPLOYMENT

8 Employment exit provisions

8.1 This Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract, or part or otherwise) resulting in a transfer of the Services in whole or in part ("**Subsequent Transfer**"). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the Relevant Transfer Date.

8.2 The Supplier shall and shall procure that any Subcontractor shall on receiving notice of termination of this Contract or otherwise, on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services, the Supplier's

Provisional Supplier Personnel List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to each individual listed on the Supplier's Provisional Supplier Personnel List. The Supplier shall notify the Authority of any material changes to this information as and when they occur.

8.3 At least 28 days prior to the Relevant Transfer Date, the Supplier shall and shall procure that any Subcontractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Supplier, the Supplier's Final Supplier Personnel List, which shall be complete and accurate in all material respects. The Supplier's Final Supplier Personnel List shall identify which of the Supplier's and Subcontractor's personnel named are Relevant Employees.

8.4 The Authority shall be permitted to use and disclose the Supplier's Provisional Supplier Personnel List, the Supplier's Final Supplier Personnel List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services that are substantially the same type of services as (or any part of) the Services.

8.5 The Supplier warrants to the Authority and the Replacement Supplier that the Supplier's Provisional Supplier Personnel List, the Supplier's Final Supplier Personnel List and the Staffing Information ("**TUPE Information**") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Supplier Personnel List.

8.6 The Supplier shall and shall procure that any Subcontractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

8.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the 12 months prior to the Expiry Date and/or the period following the date of service of a Termination Notice by either Party, shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Supplier shall and shall procure that any Subcontractor shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.

8.8 In the 12 months prior to the Expiry Date and the period following the date of service of a Termination Notice by either Party, the Supplier shall not and shall procure that any Subcontractor shall not materially increase or decrease the total number of staff

listed on the Supplier's Provisional Supplier Personnel List, their remuneration, or make any other change in the terms and conditions of those employees without the Authority's prior written consent.

8.9 The Supplier shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Supplier’s Personnel, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance, pension contributions and otherwise, up to the Relevant Transfer Date.

8.10 The Supplier shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every Replacement Supplier against all Employee Liabilities relating to:

8.10.1 any person who is or has been employed or engaged by the Supplier or any Subcontractor in connection with the provision of any of the Services; or

8.10.2 any trade union or staff association or employee representative,

arising from or connected with any failure by the Supplier and/or any Subcontractor to comply with any legal obligation, and whether any such claim arises or has its origin before or after the Relevant Transfer Date.

8.11 The Authority will and/or shall ensure that any Replacement Supplier will indemnify and keep indemnified in full the Supplier against any liability to the extent only arising from any failure by the Authority and/or any Replacement Supplier to comply with their obligations under TUPE.

8.12 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

8.13 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply in respect of paragraph 8.2 to paragraph 8.10 to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Authority in its own right under the Contracts (Rights of Third Parties) Act 1999.

8.14 Despite paragraph 8.13, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Contract without the consent of any other person who

has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

Schedule 12: Annex 1 – Exit Plan

The content for this Annex is contained in a separate file at (insert file name)

Schedule 13

Form of Guarantee

Government
Legal Department

[Insert the name of the Guarantor]

- and -

THE INSTITUTE FOR APPRENTICESHIPS AND TECHNICAL EDUCATION

DEED OF GUARANTEE IN RELATION TO

THE [xxx] T LEVEL TECHNICAL QUALIFICATION

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 202[ ]

BETWEEN:

(1) [*Insert the name of the Guarantor*] [a company incorporated in England and Wales with number [ ] whose registered office is at *[insert details of the Guarantor's registered office here]*] [a company incorporated under the laws of *[insert country]*, registered in *[insert country]* with number *[insert number]* at *[insert place of registration]*, whose principal office is at *[insert office details]* (**"Guarantor"**); in favour of

(2) **THE INSTITUTE FOR APPRENTICESHIPS AND TECHNICAL EDUCATION** of Level 1, 151 Buckingham Palace Road, London SW1W 9SZ (**"Beneficiary"**)

WHEREAS:

(A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.

(B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.

(C) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1 Definitions and Interpretation

In this Deed of Guarantee:

1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;

1.2 the words and phrases below shall have the following meanings:

(a) "**Guaranteed Agreement**" means the contract between the Beneficiary and the Supplier on [*insert date*] for the provision by the Supplier of services to the Beneficiary relating to the design, development and delivery of the technical education qualification element for the [*insert relevant pathway*] T Level and under which the Supplier will provide the technical education qualification element ("**TQ**") of the T Level;

(b) "**Guaranteed Obligations**" means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;

(c) "**Insolvency Event**" has the meaning given to that term in the Guaranteed Agreement;

(d) "**Party**" means a party to this Deed of Guarantee and "**Parties**" shall be construed accordingly;

(e) **"Supplier"** means [*insert the name of the Supplier*] [a company incorporated in England and Wales with number [ ] whose registered office is at *[insert details of the Supplier's registered office here]*] [a company incorporated under the laws of *[insert country]*, registered in *[insert country]* with number *[insert number]* at *[insert place of registration]*, whose principal office is at *[insert office details];* and

(f) "**Termination Event**" has the same meaning as Supplier Termination Event in the Guaranteed Agreement and/or any other rights of termination in respect of the Guaranteed Agreement that the Beneficiary may have at law (whether under statute, at common law or as a result of any other legal basis);

1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;

1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect. This Deed of Guarantee shall be binding on and enure to the benefit of, the Parties and their respective successors and permitted assigns and references to a Party shall include that Party's successors and permitted assigns;

1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;

1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;

1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;

1.10 references to Clauses are, unless otherwise provided, references to Clauses of this Deed of Guarantee;

1.11 Clause headings shall not affect the interpretation of this Deed of Guarantee;

1.12 any obligation on a person not to do something includes an obligations not to allow that thing to be done; and

1.13 references to liability are to include any liability whether actual, contingent, present or future.

2 Guarantee and indemnity

2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually observes, performs and discharges all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.

2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.

2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

(a) fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

(b) as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Obligation to enter into a new contract

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4 Demands and Notices

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

(a) [*Address of the Guarantor in England and Wales*]

(b) [*Facsimile Number*]

(c) For the Attention of [*insert details*]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of

this Deed of Guarantee as being a replacement address or facsimile number (superseding those set out in this Clause 4.1) for the receipt of such demands or notices.

4.2 Any demand or notice served by the Guarantor on the Beneficiary under this Deed of Guarantee shall be in writing, addressed to:

(a) [*Address of the Beneficiary*]

(b) [*Facsimile Number*]

(c) For the Attention of [*insert details*]

or such other address in England and Wales or facsimile number as the Beneficiary has from time to time notified to the Guarantor in writing in accordance with the terms of this Deed of Guarantee as being a replacement address or facsimile number (superseding those set out in this Clause 4.2) for the receipt of such demands or notices.

4.3 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

(a) if delivered by hand, at the time of delivery; or

(b) if posted by prepaid first class mail recorded delivery letter, at 10.00 a.m. on the second Working Day after it was put into the post; or

(c) if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.4 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched (by receipt of a successful transmission notice), as the case may be.

4.5 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

4.6 No notices may be served by email.

5 Beneficiary's protections

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to, novation, supplement of or to the Guaranteed Obligations and/or the Guaranteed Agreement or termination of the Guaranteed Agreement or by any forbearance, concession, waiver or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, novation, supplement of, termination, concession, waiver, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

(a) it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;

(b) it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person, including the occurrence in respect of the Supplier, Beneficiary and/or the Guarantor of an Insolvency Event;

(c) if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor/primary obligor in respect thereof; and

(d) the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6 Guarantor intent

Without prejudice to the generality of Clause 5, the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7 Rights of subrogation

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

7.1 of subrogation and indemnity;

7.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and

7.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust

for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Supplier (other than cross-indemnities or other security taken in the ordinary course of its financial arrangements with its Affiliates) and agrees not to do take any further security until the Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8 Deferral of rights

8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

(a) claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement; or

(b) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.

8.2 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not following the occurrence of an Insolvency Event relating to the Supplier or any Termination Event relating to the Supplier:

(a) exercise any rights it may have to be indemnified by the Supplier;

(b) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

(c) claim any set-off or counterclaim against the Supplier.

8.3 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9 Representations and warranties

The Guarantor hereby represents and warrants to the Beneficiary that:

9.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

9.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

9.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:

(a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;

(b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or

(c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;

9.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect;

9.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms;

9.6 no litigation, arbitration or administrative proceedings are taking place, pending or, to the Guarantor's knowledge, threatened against it or its assets; and

9.7 no event or circumstance is outstanding which constitutes a default under any deed or instrument which is binding on the Guarantor, or to which its assets are subject, which might have a material adverse effect on the Guarantor's ability to perform its obligations under this Deed of Guarantee.

10 Payments and set-off

10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11 Guarantor's acknowledgement

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12 Assignment

12.1 The Beneficiary shall be entitled to novate, assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13 Severance

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14 Third party rights

A person who is not a Party to this Deed of Guarantee shall have no right under this Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15 Variations

No variation of this Deed of Guarantee shall be effective unless it is in writing and signed as a deed by the Parties.

16 Counterparts

This Deed of Guarantee may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts shall together constitute the one deed.

17 Governing Law

17.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

17.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that:

(a) subject to Clause 17.2(b) below, the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts; and

(b) the Beneficiary has the right to refer any matter and proceedings arising under or in connection with this Deed of Guarantee to arbitration, with the arbitration to be conducted under the London Court of Arbitration Rules current at the relevant time. There shall only be one arbitrator and the seat or legal place of the arbitration shall be London and the proceedings will be in English.

17.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

17.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England and/or London (in the case of arbitration) being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court and/or place of arbitration is not a convenient or appropriate forum.

17.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.][1]

[1] Clause 17.5 to be included where the guarantor is outside England and Wales

EXECUTED as a DEED by

[*Insert name of the Guarantor*] acting by

Director: ……..[*Insert/print name*]

Signature: ……...

Director/Secretary: …….. [Insert/print name]

Signature: ……...

EXECUTED as a DEED by

THE INSTITUTE FOR APPRENTICESHIPS AND TECHNICAL EDUCATION acting by

Director: ……..[Insert/print name]

Signature: ……...

Director/Secretary: …….. [Insert/print name]

Signature: ……...

Schedule 14

Form of Assignment and Licence

DATED _____

THE INSTITUTE FOR APPRENTICESHIPS AND TECHNICAL EDUCATION

and

[*Supplier*]

INTELLECTUAL PROPERTY ASSIGNMENT AND LICENCE IN RELATION TO THE [xxx] T LEVEL TECHNICAL QUALIFICATION

[***DN: The highlighted details above are to be completed at the Contract award stage***]

THIS ASSIGNMENT AND LICENCE is made on

BETWEEN:

(1) **THE INSTITUTE FOR APPRENTICESHIPS AND TECHNICAL EDUCATION** of Level 1, 151 Buckingham Palace Road, London SW1W 9SZ ("**Authority**"); and

(2) **[***insert Supplier name and details***]** ("**Supplier**"),

each a "**Party**" and together the "**Parties**".

BACKGROUND TO THIS ASSIGNMENT AND LICENCE

(A) The Authority and the Supplier have entered into a contract on the date of this Assignment and Licence for the design, development and delivery of the technical education qualification element ("**TQ**") for the [***DN: Relevant pathway to be inserted at Contract award stage***] T Level ("the **TQ Agreement**").

(B) The Supplier has agreed to assign certain intellectual property rights to the Authority, and to licence certain intellectual property rights to the Authority in connection with the TQ. The Authority has agreed to grant a licence back to the Supplier in relation to certain assigned intellectual property rights.

(C) This Assignment and Licence, together with the TQ Agreement sets out the agreed terms of such assignment and licences.

1 Assignment and Licence start, formation and interpretation

1.1 This Assignment and Licence is legally binding from the Effective Date until it ends in accordance with its terms.

1.2 In this Assignment and Licence, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this clause 1 or, where no definition is given in this clause 1, Schedule 1 to the TQ Agreement.

1.3 If a capitalised expression does not have an interpretation in this clause 1 or Schedule 1 to the TQ Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.4 In this Assignment and Licence, unless the context otherwise requires:

1.4.1 the singular includes the plural and vice versa;

1.4.2 reference to a gender includes the other gender and the neuter;

1.4.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;

1.4.4 references to a legal entity (other than the Supplier) shall include unless otherwise expressly stated any statutory successor to such entity and/or the relevant functions of such entity, and references to the Department shall include, where relevant, the ESFA;

1.4.5 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

1.4.6 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";

1.4.7 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

1.4.8 references to "**clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Assignment and Licence and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;

1.4.9 references to "**paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and

1.4.10 the headings in this Assignment and Licence are for ease of reference only and shall not affect the interpretation or construction of this Assignment and Licence.

1.5 In this Assignment and Licence, unless the context otherwise requires, the following words shall have the following meanings:

"**Ancillary Materials**" means all information and materials (other than Key Materials) to which the Authority and/or a Future Supplier would require access for the Portability Purposes, and any other materials which would be required on or to facilitate succession to a Future Supplier in a seamless manner in relation to the TQ offered or Operated by the Supplier.

Ancillary Materials shall include, without limitation:

(a) Student results including grades;

(b) statistical analysis for grading (excludes the systems supporting the analysis);

(c) lists of Providers;

(d) marked Student evidence (with moderation outcomes);

(e) data on Student credits;

(f) data on Student appeals;

(g) data on special considerations for Students;

(h) Assessment Strategy;

(i) Student registrations;

(j) draft materials in preparation for forthcoming assessments;

(k) key date schedule (forthcoming assessments);

(l) lists, with contact details, of people contracted by the Supplier to perform or oversee activities which are necessary for the conduct and quality assurance of assessments for the TQ; and

(m) materials from completed assessments, such as completed Students' examination answer booklets.

"**Approval**" has the same meaning as in the TQ Agreement;

"**Assigned Rights**" means the Intellectual Property Rights in the Key Materials;

"**Authority Authorised Representative**" has the same meaning as in the TQ Agreement;

"**Background IPR**" means any IPR owned by a Party prior to the Effective Date or created or developed by a Party otherwise than in the provision of the Services or under or in connection with the TQ Agreement, but does not include IPR in Key Materials;

"**Beneficiary**" means a Party having (or claiming to have) the benefit of an indemnity under this Assignment and Licence;

"**Claim**" means any claim for which it appears that a Beneficiary is, or may become, entitled to indemnification under this Assignment and Licence;

"**Continuing Activities**" means activities of the Supplier under the TQ Agreement which continue following the end of the second Academic Year for the final Exclusive Cohort (each as defined in the TQ Agreement) in relation to the TQ as offered by the Supplier, such as resits, appeals, and any ongoing records management contracted to the Supplier;

"**Default**" means any breach of the obligations of the Supplier (including abandonment of the Assignment and Licence in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of this Assignment and Licence and in respect of which the Supplier is liable to the Authority;

“**Deliverables**” means all information and data the Supplier creates, identifies for use, or uses as part of or for the Operation of the TQ, including Products and Management Information;

“**Dispute**” means any claim, dispute or difference which arises out of or in connection with this Assignment and Licence or in connection with the negotiation, existence, legal validity, enforceability or termination of this Assignment and Licence, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;

“**Effective Date**” means the date on which the last Party to sign has signed this Assignment and Licence;

“**Final Approval Milestone**” has the meaning given in the TQ Agreement;

“**Future Supplier**” means any Awarding Organisation appointed, at any point in the future and including any Replacement Supplier, to operate one or more T Level technical education qualifications by or at the direction of the Authority from time to time, and where the Authority is operating a T Level technical education qualification, shall also include the Authority;

“**Indemnifier**” means a Party from whom an indemnity is sought under this Assignment and Licence;

“**Insolvency Event**” means:

(a) in respect of a company:

(i) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

(ii) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively

for the purpose of, a bona fide reconstruction or amalgamation); or

(iii) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

(iv) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

(v) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

(vi) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

(vii) being a "**small company**" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(b) where the person is an individual or partnership, any event analogous to those listed in limbs (a) (i) to (vii) (inclusive) occurs in relation to that individual or partnership; or

(c) any event analogous to those listed in limbs (a) (i) to (vii) (inclusive) occurs under the law of any other jurisdiction;

"**Intellectual Property Rights**" or "**IPR**" means:

(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;

(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

(c) all other rights having equivalent or similar effect in any country or jurisdiction;

"**IPR Claim**" means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services and/or supply the Products or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under the TQ Agreement or this Assignment and Licence;

"**Key Materials**" means materials the IPR in which the Authority reasonably requires ownership of for the Portability Purposes. Examples of where the Authority may reasonably require ownership include because the Authority or a Future Supplier (or, where relevant, a potential Future Supplier) may need to copy or otherwise reproduce such materials (in whole or in part), to supply or communicate the same, or to be able control the use (in whole or in part) of such materials by third parties, or to authorise others to do so.

Key Materials shall include:

(a) specifications of content for the TQ including core and all specialist components;

(b) assessment guidelines (for Providers);

(c) quality assurance requirements (for Providers);

(d) specimen assessment materials;

(e) standards exemplification materials;

(f) updates or redevelopments of specifications of content;

(g) updates and redevelopments of any Key Materials; and

(h) any materials equivalent to the above to which a Skilled Future Supplier would reasonably require access for the Portability Purposes.

Key Materials shall not include:

(1) Support Materials, insofar as they are not part of any of the expressly included items listed above;

(2) question banks insofar as they are not part of any of the included items listed above and are not developed for the TQ; and

(3) any systems and platforms used to support the delivery of the TQ, provided that the relevant TQ content or data held in or processed by such systems and/or platforms can be extracted without requiring further processing post-extraction (and the Supplier can demonstrate that they can be so extracted) to enable use of the relevant content and/or data by a Skilled Future Supplier in conjunction with a non-proprietary or generally commercially available system or platform;

"**Know-How**" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services;

"**Law**" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

"**Losses**" means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "**Loss**" shall be interpreted accordingly;

"**New IPR**" means :

(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the TQ Agreement and updates and amendments of these items including (but not limited to) database schema; and/or

(b) IPR in or arising as a result of the performance of the Supplier's obligations under the TQ Agreement and all updates and amendments to the same,

but shall not include any IPR owned by the Supplier prior to the Effective Date;

"**Operate**" in relation to a qualification means to provide the Services or a material part of the Services, or services replacing the Services or a material part of the Services, or of an equivalent character to the Services or a material part of the Services in relation to any other qualification (whether a T Level technical education qualification or not); and "**Operation**" and other cognate terms shall have a corresponding meaning;

"**Party**" means the Authority or the Supplier and "**Parties**" means both of them where the context permits;

"**Product**" has the meaning given in the TQ Agreement;

"**Provider**" means an organisation that has a grant agreement and/or a contract in place with the ESFA to provide qualifications to Students;

"**Replacement Services**" means any services which are substantially similar to any of the Services (including the supply of any Products) and which the Authority receives in substitution for any of the Services, whether those services are provided by the Authority internally and/or by any third party;

"**Replacement Supplier**" has the meaning given in the TQ Agreement;

"**Required Insurances**" has the meaning given in the TQ Agreement;

"**Services**" means the services as described in Schedule 2 to the TQ Agreement (*Service Requirements*) including any Additional Services as defined in the TQ Agreement;

"**Termination Notice**" means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Assignment and Licence on a specified date and setting out the grounds for termination;

"**Third Party IPR**" means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Services and/or supplying the Products;

"**TQ Agreement**" has the meaning given in recital A (above);

"**Transparent**" means that students and employers will regard the TQ delivered by a Future Supplier as materially the same as the TQ delivered and operated by the (existing) Supplier;

"**Working Day**" means any day other than a Saturday or Sunday or public holiday in England and Wales.

2 Assignment

2.1 Pursuant to and for the consideration set out in the TQ Agreement, the Supplier assigns to the Authority, absolutely with full title guarantee all its right, title and interest in and to all of the Intellectual Property Rights in the Key Materials including the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Assigned Rights on or after the date of this Assignment and Licence. Such assignment shall take place on the earlier of:

2.1.1 the creation of any relevant materials known to be Key Materials;

2.1.2 the identification by the Supplier of the use of the relevant materials as part of the TQ; and

2.1.3 delivery of the relevant Key Materials to the Authority, or Operation of the TQ by the Supplier.

2.2 Key Materials are relevant course documents for the purposes of section A2DA(4) of the Apprenticeships, Skills, Children and Learning Act 2009, and on approval of the TQ at the Final Approval Milestone and on any subsequent Approval, to the extent that any copyright or any rights in copyright forming part of the Assigned Rights have not then been assigned to and vested absolutely in the Authority, they shall be transferred

to the Authority by operation of statute in accordance with section A2IA of the Apprenticeships, Skills, Children and Learning Act 2009.

3 Licences to the Authority

3.1 The Supplier hereby grants to the Authority (and the Authority shall have, in addition to any retained rights under clause 12.8 of the TQ Agreement) a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, exploit and sub-license the IPR in the Ancillary Materials and the Supplier's Background IPR and, in respect of any IPR in Key Materials, in each case to the extent that the same are not at the relevant time vested absolutely in the Authority, as necessary to enable the Authority (and its sub-licensees) to:

3.1.1 use the Key Materials and Ancillary Materials in its administration, approval and oversight of the TQ and other T Level technical education qualifications and to make the same available to others (such as Ofqual) to do the same; and

3.1.2 to use the Key Materials and the Ancillary Materials, and for any Future Supplier or potential Future Supplier to use the Key Materials and the Ancillary Materials:

(i) for competing or tendering for the delivery and Operation of the TQ and/or any Replacement TQ, during any Transition Period and following expiry or termination of the TQ Agreement; and

(ii) to deliver and Operate the TQ and any Replacement TQ, during any Transition Period and following expiry or termination of the TQ Agreement; and

3.1.3 otherwise to receive and use the Services and the Deliverables and allow any Future Supplier to use the Deliverables; and

3.1.4 to sub-license others to exercise the rights set out in this clause 3.1.

3.2 The Authority agrees that it shall use any Ancillary Materials which fall solely within element (l) of the definition of Ancillary Materials (being "*lists, with contact details, of people contracted by the Supplier to perform or oversee activities which are necessary*

for the conduct and quality assurance of assessments for the TQ") only for the purposes of planning for or executing an Emergency Exit.

4 Licence to the Supplier

4.1 The Authority hereby grants to the Supplier, in respect of the Assigned Rights, a worldwide, royalty free, perpetual and irrevocable non-exclusive licence, with the right to sublicense, to use and exploit the IPR in the Key Materials during and after the Term, but not, save as provided in the TQ Agreement, to use the same as part of a T Level, such licence being subject to clauses 12.13 and 12.14 of the TQ Agreement (which for these purposes shall survive any termination or expiry of the TQ Agreement).

5 Warranties and representations

5.1 The Supplier warrants and represents (on the Effective Date and on any relevant assignment or grant of licence taking effect) that:

5.1.1 it is or will be the sole legal and beneficial owner of, and that it owns all the rights and interests in the Assigned Rights no later than the time for assignment specified in clause 2.1 or when they are assigned in accordance with clause 12.2.1 of the TQ Agreement, save for Assigned Rights other than New IPR, in respect of which it has previously notified the Authority and the Authority has agreed in writing that this warranty shall not apply;

5.1.2 where it is not the sole legal and beneficial owner of the Assigned Rights, including the Assigned Rights which are to be used or embodied in any Key Materials, it has established that all owners of such rights consent to their assignment and transfer absolutely to the Authority;

5.1.3 it has all the necessary right and title to grant all the licences granted to the Authority under this Assignment and Licence and the TQ Agreement;

5.1.4 it has not licensed or assigned any of the Assigned Rights other than pursuant to this Assignment and Licence or the TQ Agreement;

5.1.5 the Assigned Rights are free from any security interest, option, mortgage, charge or lien;

5.1.6 it is unaware of any infringement or likely infringement of any of the Assigned Rights;

5.1.7 as far as it is aware, all the Assigned Rights are valid and subsisting and there are and have been no claims, challenges, disputes or proceedings, pending or threatened, in relation to the ownership, validity or use of any of the Assigned Rights;

5.1.8 the use of the Key Materials and Ancillary Materials, and exploitation of the Assigned Rights by the Supplier in the provision of the Services and Deliverables or by the Authority in receiving and using the Services and Deliverables or procuring any Replacement Services or by any Future Supplier in Operating any Replacement Services, will not infringe the rights of any third party; and

5.1.9 the Key Materials are its original work and have not been copied wholly or substantially from any other source.

6 Indemnity

6.1 Subject to clause 19, if there is an IPR Claim, the Supplier indemnifies the Authority against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

6.2 If an IPR Claim is made or anticipated, the Supplier must at its own expense and the Authority's sole option, either:

6.2.1 obtain for the Authority the rights in clause 2.1 and 3.1 without infringing any Third Party IPR; or

6.2.2 replace or modify the relevant item with substitutes that do not infringe IPR without adversely affecting the functionality or performance of the Deliverables.

7 Moral rights

7.1 The Supplier shall procure written absolute waivers from all authors of the Key Materials and Ancillary Materials in relation to all their moral rights arising under the

Copyright, Designs and Patents Act 1988 in relation to the Key Materials and Ancillary Materials and, as far as is legally possible, any broadly equivalent rights such authors may have in any territory of the world.

8 Ending or extending the Assignment and Licence

8.1 This Assignment and Licence ends if terminated by the Authority for any reason set out in this Assignment and Licence.

8.2 If any of the following events happen, the Authority has the right to immediately terminate this Assignment and Licence or any of the licences granted under this Assignment and Licence by issuing a Termination Notice to the Supplier (in the latter case specifying the relevant licences):

8.2.1 a Default incapable of remedy;

8.2.2 a Default capable of remedy that is not corrected within 30 days; and

8.2.3 anything occurs which entitles the Authority to terminate the TQ Agreement.

9 Claims against third parties

9.1 The Supplier may take any action it considers appropriate or necessary, subject to the Authority's prior written consent, not to be unreasonably withheld or delayed, if there is a breach, other than in connection with the TQ, by a third party of the Authority's rights in any IPR licensed to the Supplier under clause 4, and the Authority agrees to provide all such assistance as the Supplier may reasonably require (subject to meeting the Authority's reasonably agreed costs and expenses and the Supplier hereby indemnifying the Authority in respect of any loss, damage or liability the Authority incurs by reason of any such action).

10 Further assurance

10.1 At the Authority's expense the Supplier shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Assignment and Licence and the TQ Agreement, including:

10.1.1 registration of the Authority as applicant or (as applicable) proprietor of the Assigned Rights; and

10.1.2 assisting the Authority in obtaining, defending and enforcing the Assigned Rights, and assisting with any other proceedings which may be brought by or against the Authority against or by any third party relating to the Assigned Rights.

10.2 The Supplier appoints the Authority to be its attorney in its name and on its behalf to execute documents, use the Supplier's name and do all things which are necessary or desirable for the Authority to obtain for itself or its nominee the full benefit of this Assignment and Licence.

10.3 This power of attorney is irrevocable and is given by way of security to secure the performance of the Supplier's obligations under this Assignment and Licence and the proprietary interest of the Authority in the Assigned Rights and so long as such obligations of the Supplier remain undischarged, or the Authority has such interest, the power may not be revoked by the Supplier, save with the consent of the Authority.

10.4 Without prejudice to clause 10.2, the Authority may, in any way it thinks fit and in the name and on behalf of the Supplier:

10.4.1 take any action that this Assignment and Licence requires the Supplier to take;

10.4.2 exercise any rights which this Assignment and Licence gives to the Supplier; and

10.4.3 appoint one or more persons to act as substitute attorney(s) for the Supplier and to exercise such of the powers conferred by this power of attorney as the Authority thinks fit and revoke such appointment.

10.5 The Supplier undertakes to ratify and confirm everything that the Authority and any substitute attorney does or arranges or purports to do or arrange in good faith in exercise of any power granted under this clause 10.

11 How much each Party can be held responsible for

11.1 Each Party's total aggregate liability under this Assignment and Licence (whether in tort, contract or otherwise) for each claim or series of connected claims is no more than £1 million.

11.2 No Party is liable to the other for:

11.2.1 any indirect Losses; or

11.2.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

11.3 The limitation of liability set out in clause 11.1 does not apply to either Party in relation to the following:

11.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;

11.3.2 bribery or fraud or fraudulent misrepresentation by it or its employees; or

11.3.3 any liability that cannot be excluded or permitted by Law.

11.4 Each Party must use all reasonable endeavours to mitigate any Losses which it suffers under or in connection with this Assignment and Licence, including where any such Losses are covered by an indemnity.

11.5 When calculating the Supplier's liability under clause 11.1, Losses covered by Required Insurances will not be taken into consideration.

12 Invalid parts of this Assignment and Licence

12.1 If any part of this Assignment and Licence is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be removed from this Assignment and Licence as much as required and rendered ineffective as far as possible without affecting the rest of the Assignment and Licence, or whether it is valid or enforceable.

13 No other terms apply

13.1 Except as otherwise expressly provided in this Assignment and Licence or in the TQ Agreement, the provisions incorporated into this Assignment and Licence are the entire agreement between the Parties. The Assignment and Licence replaces all previous statements and agreements whether written or oral. No other provisions apply.

13.2 Variation of this Assignment and Licence is only effective if agreed in writing and signed by both Parties.

14 Other people's rights in this Assignment and Licence

14.1 No third parties may use the Contracts (Rights of Third Parties) Act ("**CRTPA**") to enforce any term of this Assignment and Licence unless stated (referring to CRTPA) in this Assignment and Licence. This does not affect third party rights and remedies that exist independently from CRTPA.

15 Relationships created by this Assignment and Licence

15.1 This Assignment and Licence does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

16 Giving up contract rights

16.1 A partial or full waiver or relaxation of the terms of this Assignment and Licence is only valid if it is stated to be a waiver in writing to the other Party.

17 Transferring responsibilities

17.1 The Supplier must not assign this Assignment and Licence without Approval.

17.2 The Authority can assign, novate or transfer this Assignment and Licence or any part of it to any Crown Body, public or private sector body which performs the functions of the Authority.

17.3 The Supplier must enter into a novation agreement in the form that the Authority specifies in order to use its rights under clause 17.2.

17.4 The Supplier can terminate this Assignment and Licence if it is novated under clause 17.2 to a private sector body that is experiencing an Insolvency Event.

18 How to communicate about this Assignment and Licence

18.1 All notices under this Assignment and Licence must be in writing and are considered effective on the Working Day of delivery as long as delivered before 5:00 pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.

18.2 Notices to the Authority must be sent to the Authority Authorised Representative's address and email address, and all notices must be copied to the Head of Contracts (xxx@education.gov.uk) and the Head of Legal (xxx@education.gov.uk) at the Authority.

18.3 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

19 Dealing with claims

19.1 If a Beneficiary is notified or otherwise becomes aware of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days after such notification or date of first awareness.

19.2 At the Indemnifier's cost the Beneficiary must both:

19.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and

19.2.2 give the Indemnifier reasonable assistance with the Claim if requested.

19.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

19.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that does not damage the Beneficiary's reputation.

19.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

19.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

19.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

19.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or

19.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

20 Resolving disputes

20.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.

20.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using clauses 20.3 to 20.5.

20.3 Unless the Authority refers the Dispute to arbitration using clause 20.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

20.3.1 determine the Dispute;

20.3.2 grant interim remedies, or any other provisional or protective relief.

20.4 The Supplier agrees that the Authority has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

20.5 The Authority has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 20.4, unless the Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 20.4.

20.6 The Supplier cannot suspend the performance of this Assignment and Licence during any Dispute.

21 Which law applies

21.1 This Assignment and Licence and any issues arising out of, or connected to it, are governed by English law.

ANNEX

IPR Assurance Certificate

This certificate is given pursuant to clause 12.9 of the agreement ("**Contract**") between the Institute for Apprenticeships and Technical Education ("**Authority**") and the supplier named below ("**Supplier**"), and the Intellectual Property Assignment and Licence between the Authority and the Supplier (which also forms Schedule 14 of the Contract) ("**Assignment and Licence**").[2]

Guidance:

When to complete this certificate: This certificate should be completed in respect of each Deliverable (as defined in the Contract) which is made available to the Authority under the Contract, and a completed certificate should be supplied to the Authority with that Deliverable. This includes updates to existing Deliverables.

Purpose of this certificate: This certificate is intended to confirm that the specific Deliverable fully complies with the intellectual property provisions of the Contract. A copy of the certificate will be retained by the Authority as evidence of the intellectual property position.

Supplier Declaration:

We (being the Supplier named below) confirm that the Deliverable(s) supplied together with (or shortly before or after) this certificate, all elements of which are listed in either Table 1 or Table 2 below[3], comply with the intellectual property provisions in the Contract, in particular the applicable warranties set out in clause 5 of the Assignment and Licence.

We confirm that the Deliverable(s) either:
(i) contain no third party intellectual property rights, or
(ii) contain third party intellectual property rights and we have obtained the consent of the applicable third party:

- in the case of Key Materials, to their assignment and transfer to the Authority; and/or
- in the case of Ancillary Materials, to their licence to the Authority,

in each case on the terms and conditions of the Contract and Assignment and Licence.

We confirm that this certificate overrides any statement or copyright notice forming part of the Deliverable(s) which is in any way inconsistent with this certificate. We agree that this certificate does not detract in any way from the rights granted to the Authority in the Contract.

Key Materials

[2] The parties have agreed to replace the certificate in the form set out in the Annex to Schedule 14 of the Contract with this completed version, which lists Deliverables that are being made available to the Authority. For the avoidance of doubt, an additional completed version of this certificate may be produced for a Deliverable in the event that the Deliverable is updated and made available to the Authority. No Deliverable(s) listed on this and any other certificate shall be removed or replaced unless otherwise specified by the Authority.

[3] If, by exception, the Supplier asserts that the Deliverable includes elements which are neither Key Materials nor Ancillary Materials, this should be notified in writing to the Authority prior to the relevant Deliverable being made available to the Authority.

We confirm that the Deliverable(s) set out in Table 1 below, or the elements of the Deliverable(s) set out in Table 1 below, are Key Materials, as defined in the Contract:

Table 1

Deliverable	**Key Materials**
[Set out title / description of the Deliverable]	Set out elements which are Key Materials, or confirm "entire Deliverable"
[insert additional rows if required]	

All intellectual property rights in the Deliverable(s), or elements of the Deliverable(s) listed above in Table 1 as Key Materials, have vested or hereby vest in the Authority pursuant to the Assignment and Licence.

Ancillary Materials

We confirm that the Deliverable(s) set out in Table 2 below, or the elements of the Deliverable set out in Table 2 below are Ancillary Materials, as defined in the Contract:

Table 2

Deliverable	**Ancillary Materials**
[Set out title / description of the Deliverable]	Set out elements which are Ancillary Materials, or confirm "entire Deliverable"
[insert additional rows if required]	

All intellectual property rights in the Deliverable(s), or elements of the Deliverable(s) listed above in Table 2 as Ancillary Materials, are licensed to the Authority on the terms and conditions of and pursuant to the Assignment and Licence.

Signed for and on behalf of the Supplier:

Name

Position

Date

Signed by

[*Supplier*]

Director: ……..[*Insert/print name*]

Signature: ……...

Signed by

THE INSTITUTE FOR APPRENTICESHIPS AND TECHNICAL EDUCATION

Director: ……..[Insert/print name]

Signature: ……...

Schedule 15

Monitoring of Performance

1 Self monitoring

1.1 The Supplier shall monitor its performance of the Services (other than the Initial Development Services) and (where applicable) the supply of the Products against each KPI (in the manner set out in paragraph 1.2) and shall deliver to the Authority Authorised Representative the Operational Delivery Report in accordance with paragraph 3 (*Operational Delivery Report and Performance Review Meetings*).

1.2 The Supplier shall, in respect of each KPI, apply the applicable Performance Monitoring Methodology to such KPI to assess the Supplier's performance of such relevant KPI during the relevant Performance Monitoring Period.

2 What happens if you don't meet the Service Levels

2.1 The Supplier shall at all times provide the Services and (where applicable) supply the Products to meet or exceed the Target Service Level for each KPI.

2.2 If, in any Contract Month in which a Performance Monitoring Period for a KPI ends, the Supplier fails to achieve the Target Service Level for that KPI ("**Service Failure**"), the Supplier shall submit to the Authority (as part of the Operational Delivery Report for that Contract Month) for Approval an improvement plan ("**KPI Improvement Plan**") setting out:

2.2.1 the reasons for such Service Failure; and

2.2.2 what steps the Supplier proposes to take to:

(i) mitigate the impact of the Service Failure;

(ii) rectify the event, matter or circumstance giving rise to the Service Failure (including details of the proposed timings for such rectification); and

(iii) prevent the Service Failure from recurring.

2.3 The Authority shall (as soon as reasonably practicable following receipt of the KPI Improvement Plan) either:

2.3.1 confirm to the Supplier that the KPI Improvement Plan is Approved and following receipt of such Approval the Supplier shall:

(i) carry out and complete all of the actions in accordance with the approved KPI Improvement Plan; and

(ii) report on its progress against such KPI Improvement Plan in each and every Performance Review Meeting which occurs whilst the Supplier is (or should be, if it was complying with its obligations under this Contract) carrying out and completing the actions in accordance with the KPI Improvement Plan; or

2.3.2 confirm to the Supplier that the Authority is not satisfied with the KPI Improvement Plan and/or that the steps proposed by the Supplier in the KPI Improvement Plan will address the matters referred to in paragraph 2.2.1, in which case the provisions of clause 13.2 (*What may happen if there are issues with your provision of the Services*) shall apply.

2.4 Where:

2.4.1 the Supplier fails to provide a KPI Improvement Plan in accordance with paragraph 2.2; or

2.4.2 following Approval by the Authority of the KPI Improvement Plan in accordance with paragraph 2.3, the Supplier fails to carry out and/or complete the actions in accordance with the KPI Improvement Plan (as Approved),

then such failure shall be deemed to be a Critical Service Failure.

3 Operational Delivery Report and Performance Review Meetings

3.1 Within 5 Working Days after the end of each Contract Month, the Supplier shall deliver to the Authority Authorised Representative the Operational Delivery Report in respect of the performance by the Supplier of the Services (and (where applicable) the supply

of the Products) during the Contract Month just ended together with updated versions (meeting, where applicable, all of the requirements of the relevant Product Description) of the following:

3.1.1 the Implementation Plan;

3.1.2 the Resource Plan;

3.1.3 the Risk Register;

3.1.4 the Issues Log;

3.1.5 the Assessment Strategy; and

3.1.6 any draft version of the Key Dates Schedule that the Supplier intends shall (if Approved) become the Key Dates Schedule for the purposes of this Contract from time to time.

3.2 Within 5 Working Days of receipt by the Authority Authorised Representative of the Operational Delivery Report for the relevant Contract Month, the Parties shall attend a meeting to discuss the content of the relevant Operational Delivery Report (the "**Performance Review Meeting**") at such location and time (within normal business hours) as the Authority shall reasonably require and such Performance Review Meeting shall:

3.2.1 be attended by the Authority Authorised Representative and the Supplier Authorised Representative and/or such other senior representatives of either Party as the Authority Authorised Representative and/or the Supplier Authorised Representative shall reasonably require (having regard to the matters to be discussed at the relevant Performance Review Meeting); and

3.2.2 be fully minuted by the Supplier and the minutes shall be circulated by the Supplier to all attendees at the relevant Performance Review Meeting (and any other recipients agreed at the relevant meeting) as soon as reasonably practicable following the relevant Performance Review Meeting.

3.3 The minutes of the preceding Contract Month's Performance Review Meeting will be agreed and signed by both the Authority Authorised Representative and the Supplier Authorised Representative at the next following Performance Review Meeting.

3.4 Without prejudice to clause 9 (*Record keeping, monitoring and reporting*), the Supplier shall provide to the Authority such additional information and/or documentation as the Authority may reasonably require in order to verify the Supplier's compliance with its obligations under this Contract, including to verify:

3.4.1 whether a Service Failure has occurred; and/or

3.4.2 the level of the performance by the Supplier of the whole or any part of the Services and (where applicable) the supply of the Products,

and the Supplier shall provide such information and/or documentation within such time period as the Authority shall reasonably specify at the time of making the request for such information and/or documentation.

Schedule 15: Annex 1 – Key Performance Indicators

KPI (desired outcome)	Relevant Service Requirements (incl references to the relevant paragraph of Part 1 of the Service Requirements detailing the relevant element of the Services)	Target performance levels	Performance Monitoring Period	Evidence of performance	Measurement methodology
1. The Supplier has in place clear and TQ specific arrangements to approve Eligible Providers and monitor Approved Providers and (i) completes the relevant processes for approval quickly upon application and (ii) carries out the required monitoring	TQ Provider approval and monitoring services – paragraph 3	(i) 100% of applications from Eligible Providers decided within 30 Working Days of receipt of application; and (ii) Supplier has carried out the required monitoring in accordance with the Implementation Plan and/or the Assessment Strategy.	Each Contract Month following IfATE Approval	Management Information in relation to: (i) Eligible Providers that have applied for approval and in respect of which a decision has been made; and (ii) details of monitoring undertaken.	Performance measurement will include Eligible Providers new to the Supplier as well as the Supplier's existing Eligible Providers who have applied to have their approval extended to include the TQ.

KPI (desired outcome)	Relevant Service Requirements (incl references to the relevant paragraph of Part 1 of the Service Requirements detailing the relevant element of the Services)	Target performance levels	Performance Monitoring Period	Evidence of performance	Measurement methodology
2. Supplier has ensured that Approved Providers are clear about what they are expected to teach and to what standard of attainment, and about how Students will be assessed	Initial TQ deliverables and development services – paragraph 2 TQ Provider support services – paragraph 4 TQ live assessment design and delivery – paragraph 6	80% of Approved Providers that have responded to the survey, rating at least 4 on a 1-5 scale (where 5 = very clear 4 = mostly clear 3 = moderately clear 2 = mostly unclear 1 = not clear at all)	Termly from [September 2023]	The Authority shall undertake or commission a survey of Approved Providers delivering the TQ	Online questionnaire to Approved Providers delivering the TQ in the relevant Academic Year. This survey should achieve a minimum response rate of 50% of those surveyed to be valid
3. Queries from Eligible Providers and Approved Providers (other than those related to KPI 4 and KPI 11) are satisfactorily resolved	Initial TQ deliverables and development services – paragraph 2 TQ Provider approval and monitoring services – paragraph 3	Queries raised by letter and other forms of electronic correspondence: 90% resolved within 10 Working Days; remaining 10% resolved	Each Contract Month from the Effective Date	Management Information based on data and information collected from the Supplier's customer management systems referred to in Service Requirement 5 in Part 2 of the Service Requirements.	The required resolution time commences on and from the Working Day on which the relevant query is received by the Supplier

KPI (desired outcome)	Relevant Service Requirements (incl references to the relevant paragraph of Part 1 of the Service Requirements detailing the relevant element of the Services)	Target performance levels	Performance Monitoring Period	Evidence of performance	Measurement methodology
in accordance with the Target Service Level	TQ Provider support services – paragraph 4 Student registration and student entry – paragraph 5 TQ live assessment design and delivery – paragraph 6 TQ Post-Results Services – paragraph 9	within 15 Working Days; and Queries raised through telephone calls: 90% resolved within 2 Working Days; remaining 10% resolved within 10 Working Days		This must include relevant information that closed queries have been satisfactorily resolved.	Percentage of queries that are resolved in accordance with the applicable Target Service Level
4. Formal complaints made about the Services are satisfactorily resolved (i) in accordance with the timescales set out in the Implementation Plan[4] or (ii) where complaints are received solely by the	Initial TQ deliverables and development services – paragraph 2 TQ Provider approval and monitoring services – paragraph 3 TQ Provider support services – paragraph 4	100% of formal complaints are resolved within: (i) the relevant timescales detailed in the Implementation Plan; or	Each Contract Month from the Effective Date	Management Information based on data and information collected from the Supplier's customer management systems referred to in Service Requirement 5 in Part 2 of the Service Requirements. This must include relevant information that complaints	The required resolution time commences on and from the Working Day on which the relevant complaint is received by the Supplier. Percentage of complaints that are satisfactorily resolved

[4] The Supplier Response should detail the Supplier's proposals for resolving formal complaints.

KPI (desired outcome)	Relevant Service Requirements (incl references to the relevant paragraph of Part 1 of the Service Requirements detailing the relevant element of the Services)	Target performance levels	Performance Monitoring Period	Evidence of performance	Measurement methodology
Department, ESFA or the Authority, within the timescales reasonably required by the Department, ESFA or the Authority at the time of notifying the Supplier of such complaints	Student registration and student entry – paragraph 5 TQ live assessment design and delivery – paragraph 6 TQ Post-Results Services – paragraph 9	(ii) the timescales specified by the Department, ESFA or the Authority, (as the case may be).		have been satisfactorily resolved.	within the applicable Target Service Level. Any complaints received solely by the Department, ESFA or the Authority, in relation to the Services, shall be deemed to have been received by the Supplier on the date on which the Supplier is notified of the complaint by the Department, ESFA or the Authority.
5. Approved Providers are satisfied with the quality of the Provider Services	TQ Provider approval and monitoring services – paragraph 3 TQ Provider support services – paragraph 4	80% of Approved Providers that have responded to the survey, rating at least 4 on a 1-5 scale (where 5 = very satisfied	Termly from [September 2023]	The Authority shall undertake or commission a survey of Approved Providers delivering the TQ	Online questionnaire to Approved Providers delivering the TQ in the relevant Academic Year. This survey should achieve a minimum response rate of 50% of

KPI (desired outcome)	Relevant Service Requirements (incl references to the relevant paragraph of Part 1 of the Service Requirements detailing the relevant element of the Services)	Target performance levels	Performance Monitoring Period	Evidence of performance	Measurement methodology
	Student registration and student entry – paragraph 5 TQ live assessment design and delivery – paragraph 6 TQ Post-Results Services – paragraph 9	4 = satisfied 3 = neither satisfied nor dissatisfied 2 = dissatisfied 1 = very dissatisfied).			those surveyed to be valid.
6.A sufficient number of appropriately qualified and trained Assessors (and Moderators where permitted in accordance with the Approved Assessment Strategy) are available to assess (or Moderate, if applicable) Student assessment evidence when required in accordance with the	TQ live assessment design and delivery – paragraph 6	100% of appropriately qualified and trained Assessors (and Moderators, if applicable) are available in accordance with the Implementation Plan and/or the Resource Plan (as the case may be).	Each Contract Month from (and including) [August 2023]	Management Information in relation to Assessor (and Moderator, if applicable) actual recruitment, training, and retention against the details set out in the Implementation Plan and Resource Plan (as the case may be).	Performance will be measured against the number of Assessors (and Moderators, if applicable) that are envisaged as being trained and available as detailed in the Implementation Plan and/or the Resource Plan (as the case may be).

KPI (desired outcome)	Relevant Service Requirements (incl references to the relevant paragraph of Part 1 of the Service Requirements detailing the relevant element of the Services)	Target performance levels	Performance Monitoring Period	Evidence of performance	Measurement methodology
Implementation Plan and/or the Resource Plan (as the case may be)					
7. The TQ Live Assessment Materials (as defined in the Service Requirements) are high quality and developed in accordance with the Assessment Strategy	TQ live assessment design and delivery – paragraph 6	That part of the Assessment Strategy that relates to the development of the TQ Live Assessment Materials has been fully complied with; and TQ Live Assessment Materials are 100% free of errors that could affect clarity about requirements for Students.	Each Contract Month from IfATE Approval	Management Information in relation to: (i) progress against and compliance with the relevant part of the Assessment Strategy; and (ii) any errors reported in TQ Live Assessment Materials.	Review of Supplier self-reporting Identification of any reported errors in TQ Live Assessment Materials.

KPI (desired outcome)	Relevant Service Requirements (incl references to the relevant paragraph of Part 1 of the Service Requirements detailing the relevant element of the Services)	Target performance levels	Performance Monitoring Period	Evidence of performance	Measurement methodology
8. Student assessment evidence is accurately assessed and processed for grading and awarding in accordance with the relevant parts of the Assessment Strategy and the Implementation Plan	TQ live assessment design and delivery – paragraph 6 TQ Grade awarding – paragraph 7	Assessing of Student assessment evidence is conducted in accordance with the relevant parts of the Assessment Strategy; and 100% of Students' assessments are marked and processed in accordance with the relevant parts of the Implementation Plan.	Each Contract Month from [September 2023] until the end of the Term [***DN: Date to be updated in version issued with ITT for each new Wave***]	Management Information in relation to compliance with the relevant parts of the Assessment Strategy and the relevant parts of the Implementation Plan.	Review of Supplier self-reporting.
9. Grade Standard Exemplification Materials are validated by Employers	TQ live assessment design and delivery – paragraph 6	At least 5 Employers in each relevant Occupational	In October in each Academic Year following the first grade awarding but in	Evidence of validation from Employers relevant to the Occupational Specialist Components that validate	Validation means that Employers relevant to the Occupational Specialist Components judge that the Grade

KPI (desired outcome)	Relevant Service Requirements (incl references to the relevant paragraph of Part 1 of the Service Requirements detailing the relevant element of the Services)	Target performance levels	Performance Monitoring Period	Evidence of performance	Measurement methodology
	TQ Grade awarding – paragraph 7	Specialist Component.	any event no later than from [October 2025] [***DN: Date to be***	the Grade Standard Exemplification Materials. The Supplier may use its existing network of Employers, but it must ensure a turnover of Employers each Academic Year, with no Employer repeated more than once. For each Occupational Specialist Component, validations are required from at least two Employers each Academic Year who did not submit evidence of validation in the previous Academic Year.	Standard Exemplification Materials are comparable to the Approved Guide Standard Exemplification Materials. Review by the Authority of the evidence of validation from Employers.

KPI (desired outcome)	Relevant Service Requirements (incl references to the relevant paragraph of Part 1 of the Service Requirements detailing the relevant element of the Services)	Target performance levels	Performance Monitoring Period	Evidence of performance	Measurement methodology
10. Student assessment results are submitted to the Authority (or its nominee (as applicable)) by the relevant date(s) set out in the Key Dates Schedule	TQ Grade awarding – paragraph 7 TQ Results – paragraph 8	100% of results are submitted to the Authority (or its nominee) by the date(s) set out in the relevant Key Dates Schedule.	Each Contract Month from [September 2023] until the end of the Term [	Results have been received by the Authority (or its nominee (as applicable)) in the required format.	Receipt of the results by the relevant date(s) in the relevant Key Dates Schedule.
11. Post-Results Services (excluding the issuing of revised assessment results, which is covered by KPI 10) are delivered in accordance with the relevant part of the Assessment Strategy	TQ Post-Results Services – paragraph 9	100% of the Post-Results Services are carried out and completed in accordance with the relevant part of the Assessment Strategy.	Each Contract Month from (and including) [August 2023] until the end of the Term	Management Information in relation to compliance with the relevant part of the Assessment Strategy.	Review of self-reporting.
12. Submission to the Authority of: (i) all Management Information in	TQ Provider approval and monitoring services – paragraph 3	100% for timeliness of the submission of all Management Information and all required (including	Each Contract Month from the Effective Date	Management Information and updated versions of the Products and/or other documents referred to in column one are received by	Review of self-reporting.

KPI (desired outcome)	Relevant Service Requirements (incl references to the relevant paragraph of Part 1 of the Service Requirements detailing the relevant element of the Services)	Target performance levels	Performance Monitoring Period	Evidence of performance	Measurement methodology
accordance with the requirements of Service Requirement 9 in Part 2 of the Service Requirements; and (ii) updated versions of all required Products in accordance with clause 5.5.1(i) and/or paragraph 3 of Schedule 15 (as the case may be); and (iii) where requested by the Authority, updated versions of all requested Products and/or other documents in accordance with clause 5.5.1(ii).	Student registration and student entry – paragraph 5 Reporting – paragraph 10	requested) Products and/or other documents; and 100% for completeness of all: (i) Management Information; and (ii) required Products (not including requested Products).		the Authority by the date required by this Contract. Management Information is accurate and complete and covers all relevant information, data and reports as specified in the Management Information and reporting requirements. Updated versions of the Products referred to in column one include all relevant updates.	

Schedule 16

Logos and Trademarks – T Level Trade Mark Licence

1 Interpretation

The definitions and rules of interpretation in this paragraph apply in this T Level Trade Mark Licence, in addition to the definitions and rules of interpretation in Schedule 1 to this Contract.

1.1 Definitions:

"**Approved Provider**" means an Eligible Provider (as defined in Schedule 1 (*Definitions and Interpretation*) of this Contract) that has been granted Provider Approval (as defined in Schedule 1 (*Definitions and Interpretation*) of this Contract) and in respect of which such Provider Approval has not been revoked pursuant to clause 7.2 of this Contract (*Interaction with Providers*).

"**Brand Licensed Material**" means any instance of a Brand Licensed Product or Service in material form, including as an electronic copy or any other electronic form, and any promotional or marketing material relating to any Brand Licensed Product or Service;

"**Brand Licensed Product or Service**" means any products or services listed as such in Appendix 1 (and "**Brand Licensed Products**" and "**Brand Licensed Services**" means such Products or Services respectively;

"**Mandatory Marked Material**" is material of the type identified in Appendix 1 (and to which the Mark must be applied);

"**Mark**" means the trade mark(s) set out in Appendix 2, including the listed registrations and applications and any registrations which may be granted pursuant to those applications and the related trade marks, devices and get-ups that may be notified in writing by the Authority to the Supplier from time to time;

"**Marked Material**" means any Brand Licensed Material or other material in or on which the Mark is used.

2 Grant

2.1 The Authority hereby grants to the Supplier a non-exclusive licence to use the Mark on or in relation to the Brand Licensed Products or Services provided or supplied in England, including in connection with the promotion, use and supply of the Brand Licensed Products or Services.

2.2 The Supplier may, subject to the prior written approval of the Authority and paragraph 11, sublicense (without the right to further sublicense) each Approved Provider of the TQ to use the Mark on or in relation to the Brand Licensed Products or Services provided or supplied in England, including in connection with the promotion, use and supply of the Brand Licensed Products or Services.

2.3 Any use of the Mark in accordance with paragraph 2.1 or 2.2 shall be strictly in accordance with the T Level Branding Guidelines and, when using the Mark, the Supplier shall fully comply with, the T Level Branding Guidelines.

2.4 Subject to paragraph 2.2, the Supplier shall have no right to sublicense use of the Mark.

3 Application of the Mark

3.1 The Supplier shall use the Mark, in accordance with this Schedule, on all Mandatory Marked Materials.

3.2 Subject to clause 12.10 (*Intellectual Property Rights*) of the Contract and paragraph 3.3 below, apart from the Mark, no other trade mark or logo may be affixed or used in a manner in which it may be seen to be used as a trade mark or designation of origin in relation to any Brand Licensed Products or Services or in or on any Brand Licensed Materials.

3.3 The Supplier may, subject to the prior written agreement of the Authority, authorise each Approved Provider of the TQ sublicensed in accordance with paragraph 2.2 to use the Approved Provider's name, logos, trademarks and/or other signs which refer to the Approved Provider on Brand Licensed Products or Services or Brand Licensed Materials on the same terms as, and subject to compliance with clauses 12.10 and

12.11 (*Intellectual Property Rights*) of the Contract (and clauses 12.10 and 12.11 shall apply *mutatis mutandis* to such Approved Provider).

3.4 The Supplier shall procure that the Mark, when used in or on any Brand Licensed Materials, shall be clearly and reasonably prominently identified as a trade mark of the Authority, in such manner as is set out in the T Level Branding Guidelines, or with any other statement as notified by the Authority to the Supplier.

3.5 The Supplier shall comply strictly with the directions of the Authority regarding the form and manner of the application of the Mark, including the directions contained in the T Level Branding Guidelines.

3.6 The Supplier shall, on written request from the Authority or as otherwise provided in the T Level Branding Guidelines, provide samples of all proposed Marked Materials.

3.7 The Supplier shall not use in its business any other trade mark confusingly similar to the Mark and shall not use the Mark or any word confusingly similar to the Mark as, or as part of, its corporate or trading name.

4 Title, goodwill and registrations

4.1 The Supplier acknowledges that the Authority is the owner of the Mark.

4.2 Any goodwill derived from the use by the Supplier of the Mark shall accrue to the Authority. The Authority may, at any time, call for a document confirming the assignment of that goodwill and the Supplier shall immediately execute it.

4.3 The Supplier shall not do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the Mark or the reputation or goodwill associated with the Mark or the Authority, or that may invalidate or jeopardise any registration of the Mark.

4.4 The Supplier shall not apply for, or obtain, registration of the Mark in any country for any goods or services.

4.5 The Supplier shall not apply for, or obtain, registration of any trade or service mark in any country which consists of, or comprises, or is confusingly similar to, the Mark for any goods or services.

5 Quality control

5.1 The Supplier shall comply with the specifications and standards relating to the Brand Licensed Products or Services which are specified in the Contract.

5.2 The Supplier shall promptly provide the Authority with copies of all communications relating to the Mark with any regulatory, industry or other authority.

5.3 The Supplier shall permit, and shall use its best endeavours to obtain permission for, the Authority at all reasonable times and on reasonable notice to enter any place used for the production, storage or distribution of the Marked Materials to inspect the Marked Materials in relation to compliance with this T Level Trade Mark Licence.

5.4 Without prejudice to any other rights of the Authority, in the event that the Authority finds that any sample of Marked Materials does not meet the requirements of this T Level Trade Mark Licence, it may give notice to the Supplier, and the Supplier shall take all reasonable steps to correct any deficiency as soon as reasonably practicable (having regard to constraints of the academic timetable).

6 Marketing, advertising and promotion

6.1 The Supplier undertakes to ensure that its advertising, marketing and promotion of Brand Licensed Products or Services shall in no way reduce or diminish the reputation, image and prestige of the Mark.

7 Recordal of licence

7.1 The Authority may, at its own cost, record the licence granted to it in paragraph 2 in the relevant registries against any registrations and applications for registration of the Marks.

7.2 The Supplier shall, at the Authority's request, execute a formal licence in such form and provide such other assistance as may be required for the purpose of such recordal.

8 Protection of the Mark

8.1 The Supplier shall immediately notify the Authority in writing giving full particulars if any of the following matters come to its attention:

8.1.1 any actual, suspected or threatened infringement of the Mark;

8.1.2 any actual or threatened claim that the Mark is invalid;

8.1.3 any actual or threatened opposition to the Mark;

8.1.4 any claim made or threatened that use of the Mark infringes the rights of any third party;

8.1.5 any person applies for, or is granted, a registered trade mark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to the Supplier under this T Level Trade Mark Licence; or

8.1.6 any other form of attack, charge or claim to which the Mark may be subject.

8.2 In respect of any of the matters listed in paragraph 8.1:

8.2.1 the Authority shall, in its absolute discretion, decide what action if any to take;

8.2.2 the Authority shall have exclusive control over, and conduct of, all claims and proceedings;

8.2.3 the Supplier shall not make any admissions other than to the Authority and shall provide the Authority with all assistance that it may reasonably require in the conduct of any claims or proceedings; and

8.2.4 the Authority shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.

8.3 The provisions of section 30 of the Trade Marks Act 1994 (or equivalent legislation in any jurisdiction) are expressly excluded.

8.4 Nothing in this T Level Trade Mark Licence shall constitute any representation or warranty that:

8.4.1 any registration comprised in the Mark is valid;

8.4.2 any application comprised in the Mark shall proceed to grant or, if granted, shall be valid; or

8.4.3 the exercise by the Supplier of rights granted under this T Level Trade Mark Licence will not infringe the rights of any person.

9 Liability, indemnity and insurance

9.1 Nothing in this paragraph shall impose or create any liability of the Supplier to the Authority for use in England of the Mark on or in respect of Mandatory Marked Materials in accordance with the terms of this T Level Trade Mark Licence.

9.2 To the fullest extent permitted by law, the Authority shall not be liable to the Supplier for any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or other loss of profits, business or goodwill) arising from the Supplier's exercise of the rights granted to it under this T Level Trade Mark Licence.

9.3 Save as provided in paragraph 9.1, the Supplier indemnifies the Authority against all Loss to the Authority arising out of or in connection with the Supplier's exercise of its rights granted under this T Level Trade Mark Licence, including any claim made against the Authority for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection therewith, other than where any such Loss and/or claim arises exclusively from the use of the Mark in accordance with this T Level Trade Mark Licence.

10 Additional Supplier obligations

10.1 The Supplier shall:

10.1.1 only make use of the Mark for the purposes authorised in this T Level Trade Mark Licence; and

10.1.2 comply with all regulations and practices in force or use in any territory to safeguard the Authority's rights in the Mark.

10.2 The Supplier shall not, nor directly or indirectly assist any other person to:

10.2.1 use the Mark except as permitted under this T Level Trade Mark Licence; or

10.2.2 do or omit to do anything to diminish the rights of the Authority in the Mark or impair any registration of the Mark.

10.3 The Supplier acknowledges and agrees that the exercise of the licence granted to the Supplier under this T Level Trade Mark Licence is subject to all applicable laws, enactments, regulations and other similar instruments in any territory, and the Supplier understands and agrees that it shall at all times be solely liable and responsible for such due observance and performance.

11 Sub-licensing

11.1 The Supplier shall have the right to grant to Approved Providers a sub-licence of any of its rights under this T Level Trade Mark Licence provided that:

11.1.1 the Supplier shall ensure that the terms of any sub-licence are in writing and are substantially the same as the terms of this T Level Trade Mark Licence (except that the sub-licensee shall not have the right to sub-license its rights) and the Supplier shall provide the Authority with a copy of the sub-licence on request and the Authority may require that any such sublicence includes the Authority as a party, and that the Authority is entitled to enforce its terms;

11.1.2 all sub-licences granted shall terminate automatically on termination or expiry of this T Level Trade Mark Licence; and

11.1.3 the Supplier shall be liable for all acts and omissions of any sub-licensee in relation to such sub-licence and indemnifies the Authority against all Losses incurred or suffered by the Authority, or for which the Authority may become liable, (whether direct, indirect or consequential and including any economic loss or other loss of profits, business or goodwill) arising out of any act or omission of any sub-licensee in relation to such sub-licence, other than to the extent any such Losses arise exclusively from the use of the Mark in accordance with this T Level Trade Mark Licence.

12 Duration and termination

12.1 This T Level Trade Mark Licence shall commence on the Effective Date and shall continue for the Term.

12.2 Without affecting any other right or remedy available to it under this T Level Trade Mark Licence or the Contract, the Authority may terminate this T Level Trade Mark Licence in respect of any Brand Licensed Product or Service with immediate effect by giving notice to the Supplier if:

12.2.1 the Supplier commits a material breach of any term of this T Level Trade Mark Licence in respect of such Brand Licensed Product or Service which breach is irremediable, or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so;

12.2.2 the Supplier repeatedly breaches any of the terms of this T Level Trade Mark Licence in respect of relevant Brand Licensed Products or Services or Brand Licensed Materials in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this T Level Trade Mark Licence; or

12.2.3 the Supplier challenges the validity of the Mark.

For the purposes of paragraph 12.2.1, **material breach** means a breach that is serious in the widest sense or of any of the obligations set out in paragraphs 3, 4.3, 4.4, 4.5, 5, 6.1, 10.1 or 11.1. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

13 Consequences of termination

13.1 On expiry or termination of this T Level Trade Mark Licence for any reason and subject to any express provisions set out elsewhere in this T Level Trade Mark Licence:

13.1.1 all rights and licences granted pursuant to this T Level Trade Mark Licence shall cease;

13.1.2 the Supplier shall cease all use of the Mark save as set out in this paragraph 13;

13.1.3 the Supplier shall co-operate with the Authority in the cancellation of any licences registered pursuant to this T Level Trade Mark Licence and shall execute such documents and do all acts and things as may be necessary to effect such cancellation;

13.1.4 the Supplier shall promptly deliver up to the Authority (or at the Authority's option, destroy) at the Supplier's expense all copies of promotional material which is Marked Material or otherwise bears any Mark as a designation of origin; and

13.1.5 any provision of this T Level Trade Mark Licence that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this T Level Trade Mark Licence shall remain in full force and effect.

13.2 Termination or expiry of this T Level Trade Mark Licence shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the T Level Trade Mark Licence which existed at or before the date of termination or expiry.

Schedule 16 Appendix 1

Brand Licensed Products or Services

Those products and services identified as such in the T Level Branding Guidelines.

Mandatory Marked Materials

All Key Materials and such other materials as are identified as such in the T Level Branding Guidelines.

Schedule 16 Appendix 2

Mark

T Level

Registered trade mark(s) and applications[5]

Country	Mark	App or regn no	Date of app or regn	Classes	Specification
UK	T Level (word)	UK00003318112	15 June 2018	9, 16, 41	Class 9: Electronic apparatus and instruments for testing, examination and assessment purposes; computer software, hardware and firmware for the provision of examination and assessments including software for operation over computer networks or by remote computer access; all of the aforesaid for use in the provision of education, teaching, training and/or assessment. Class 16: Examination papers; syllabi; diplomas; education, academic and vocational certificates; printed examination regulations; all of the

[5] To be updated as required based on trade mark application position at the Effective Date.

					aforesaid for use in the provision of education, teaching, training and/or assessment. Class 41: Issuing of educational awards; awarding of educational certificates; educational assessment services; provision of examination, testing and assessment services; provision of examination, testing and assessment services electronically, by online delivery, by way of the Internet or world wide web; online publication of syllabi, examination papers, assessments; examination services; assessment services; educational certification services; certification in relation to examinations and other forms of assessment; preparation and validation, accreditation, conducting and administration of examinations, assessments and tests; provision of examination papers; information, advisory and consultancy services relating to all of the aforesaid; all of the aforesaid relating to the provision of education, teaching, training and/or assessment.
EU	T Level (word)	017999579	13 December 2018	9, 16, 41	Class 9: Educational, teaching, instruction or research apparatus and instruments; electronic apparatus and instruments for teaching, instruction, training, research, education, testing, examination and assessment purposes; media bearing electronic publications and data; electronic publications; electronic publications (downloadable)

					provided online from a database or the Internet; downloadable text and information provided electronically, by online delivery, by way of the Internet or world wide web; electronic database; audio visual teaching apparatus; films and video films; computer software, hardware and firmware; computer software, hardware and firmware for the provision of teaching, instruction, training, research, education, testing, examination and assessments including software for operation over computer networks or by remote computer access; educational software; all of the aforesaid for use in the provision of education, teaching, training and/or assessment. Class 16: Printed publications; educational publications; printed matter; educational materials; examination papers; syllabi; diplomas; education, academic and vocational certificates; printed examination regulations; books; magazines; publications; textbooks; exercise books and notebooks; catalogues, handbooks and manuals; study guides; instructional or teaching materials; all of the aforesaid for use in the provision of education, teaching, training and/or assessment. Class 41: Education services; teaching services; publication services; educational publication services; publication of printed matter relating to education; issuing of educational awards; awarding of educational

					certificates; electronic publication; publication of printed matter; educational assessment services; provision of training, teaching, academic, education, instruction, examination, testing and assessment services; provision of training, teaching, academic, education, instruction, examination, testing and assessment services electronically, by online delivery, by way of the Internet or world wide web; online publication of electronic texts, books, textbooks, brochures, syllabi, examination papers, assessments; examination services; assessment services; educational certification services; certification in relation to examinations and other forms of assessment, education, training and awards; preparation and validation, accreditation, conducting and administration of examinations, assessments and tests; provision of examination papers; information, advisory and consultancy services relating to all of the aforesaid services; all of the aforesaid relating to the provision of education, teaching, training and/or assessment services.

Schedule 17

Provider Contract requirements

1 Provider Contract

1.1 This Schedule sets out the requirements that Provider Contracts must meet.

1.2 Provider Contracts must:

1.2.1 be in writing, enforceable, and on terms that are fair and reasonable;

1.2.2 set out all the requirements with which the Approved Provider must comply in order to continue to deliver the TQ;

1.2.3 establish a sanctions policy to be applied in the event that the Approved Provider fails to comply with the requirements in the Provider Contract;

1.2.4 require the Approved Provider to:

(i) take all reasonable steps to ensure that the Supplier is able to comply with its Conditions of Recognition;

(ii) retain a workforce of appropriate size and competence to undertake the delivery of the TQ as required by the Supplier;

(iii) have available sufficient managerial and other resources to enable it effectively and efficiently to undertake the delivery of the TQ as required by the Supplier;

(iv) undertake the delivery of the qualification required by the awarding organisation in accordance with the Equality Act 2010, any Act that was a statutory predecessor to that Act, or any legislation in a jurisdiction other than England which has an equivalent purpose and effect; and

(v) operate a complaints handling procedure or appeals process for the benefit of Students;

1.2.5 where, in accordance with the Approved Assessment Strategy an Approved Provider is permitted to carry out or procure the carrying out of marking of Student assessment evidence, set out details for carrying out Moderation;

1.2.6 not materially depart from any relevant industry standards and common education sector practices;

1.2.7 be materially consistent across all Approved Providers in respect of the provision of the Provider Services and, in particular, shall not discriminate against any particular types, sizes or geographical locations of Approved Providers in connection with the provision of any Provider Services;

1.2.8 include appropriate GDPR provisions: where the Supplier, in fulfilling its obligations under this Contract, is acting as a Processor on behalf of an Approved Provider, the Provider Contract will include provisions to ensure that any personal data (as defined in the GDPR) that is Processed by the Supplier in relation to the Provider Services is Processed in accordance with Data Protection Legislation;

1.2.9 be consistent with, and to the extent necessary allow for, any information, document and data sharing requirements contained within this Contract (to include any information, documents and data that must be provided by the Supplier to the Authority and/or any third party and any information, documents and data requested by Ofqual);

1.2.10 require the Approved Provider to assist the Supplier in carrying out any reasonable monitoring activities and to assist Ofqual in any investigations made for the purposes of performing its functions;

1.2.11 allow Approved Providers to purchase Provider Services on an “as and when needed” basis without any minimum or maximum volume commitments (including in relation to the number of Students);

1.2.12 require Approved Providers to register all Students on a TQ by the end of November or within such other timescales as are required by the Key Dates Schedule for the relevant Academic Year and pay that part of the Fees

referred to in limb (a) of the definition of Fees within 30 days of such registration and provide that, if a Student terminates their study of the TQ before the end of the following January in the same Academic Year, the Supplier must provide a full refund of such Fees (relating to such Student) to the Approved Provider (for the avoidance of doubt, if the Student terminates their study of the TQ after the end of the following January in the same Academic Year, the Supplier is not obliged to give a refund);

1.2.13 include detailed provisions relating to the Approved Provider's role in quality assurance, such provisions shall give effect to the requirements of the Approved Provider's Quality Assurance Process;

1.2.14 require Approved Providers to provide advice and guidance to Students (including any Student no longer enrolled with the Approved Provider) in relation to making enquiries about results (and any further steps that may be taken following such an enquiry (including those contemplated by the Additional Services)) and where such Student reasonably requests the Approval Provider (whether directly or indirectly) to request the provision of an Additional Service, require the Approved Provider to request the provision of such Additional Service from the Supplier;

1.2.15 require Approved Providers to seek written approval from the Supplier before permitting a third party (for example training providers or satellite centres) to deliver any part of the TQ, including its assessments, and requires the Approved Providers to agree in writing to the Supplier's requirements before the Supplier approves the use of a third party;

1.2.16 place responsibility on the Approved Provider to monitor whether any third party involved with the delivery and assessment of the TQ on its behalf has appropriate capacity and capability; and

1.2.17 specify a process to be followed in any withdrawal of the Approved Provider (whether voluntary or not) from its role in delivering the TQ and require Approved Providers to take all reasonable steps to protect the interests of Students in the case of such a withdrawal.

1.3 Provider Contracts must not:

1.3.1 include terms in connection with Provider Services that are not strictly necessary for the provision of the relevant Provider Services and/or which are materially inconsistent with any of the Supplier's obligations under this Contract;

1.3.2 make the provision of the Provider Services contingent on the take up of any further qualifications or services by the Approved Provider;

1.3.3 require the Approved Provider to make any payments other than the Fees (e.g. for the avoidance of doubt, Provider Contracts shall not require any fees to be paid by the Approved Provider (or an Eligible Provider) for Provider Approval in relation to a TQ);

1.3.4 offer any discounts to the Fees; and/or

1.3.5 include provisions that are materially more onerous than any comparable provisions in this Contract.

1.4 The Supplier shall not offer to any Approved Provider any rebate, discount or other incentive in relation to services outside the Provider Services (whether or not in the Provider Contract) which is contingent on or linked to the Approved Provider entering into the Provider Contract and/or registering Students for the TQ.

Schedule 18

Commercially Sensitive Information

The content for this Schedule is contained in a separate file at (insert file name)

Schedule 19

Required Insurances

PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1 Insured

The Supplier

2 Interest

To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1 death or bodily injury to or sickness, illness or disease contracted by any person; and

2.2 loss of or damage to property,

happening during the period of insurance (as specified in paragraph 5) and arising out of or in connection with the provision of the Services under this Contract.

3 Limit of indemnity

Not less than £5,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but £5,000,000 in the aggregate per annum in respect of products and pollution liability.

4 Territorial limits

United Kingdom.

5 Period of insurance

From the Effective Date and renewable on an annual basis unless agreed otherwise by the Authority in writing for the Term.

6 Cover features and extensions

Indemnity to principals clause.

7 Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8 Maximum deductible threshold

Not to exceed £10,000 for each and every third party property damage claim (personal injury claims to be paid in full).

PART B: PROFESSIONAL INDEMNITY INSURANCE

1 Insured

The Supplier

2 Interest

To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the period of insurance (as specified in paragraph 13) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

3 Limit of indemnity

Not less than £5,000,000 in respect of any one claim and in the aggregate per annum, exclusive of defence costs which are payable in addition.

4 Territorial Limits

United Kingdom

5 Period of insurance

From the Effective Date and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) for the Term; and (b) for a period of 6 years thereafter.

6 Cover features and extensions

Retroactive cover to apply to any “claims made policy wording” in respect of this Contract or retroactive date to be no later than the Effective Date.

7 Principal exclusions

7.1 War and related perils

7.2 Nuclear and radioactive risks

8 Maximum deductible threshold

Not to exceed £10,000 for each and every claim.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

1 The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

Schedule 20

Authorised Representatives

The content for this Annex is contained in a separate file at (insert file name)