

CONTRACT FOR SERVICES

Contract reference number: 090603/400

This Contract is made this 31st day of July 2009 between:

The Higher Education Funding Council for England
Northavon House
Coldharbour Lane
Bristol BS16 1QD

hereinafter called HEFCE

and

The Quality Assurance Agency for Higher Education
Southgate House
Southgate Street
Gloucester GL1 1UB

hereinafter called QAA

RECITALS

1. HEFCE is required by section 70 of the Further and Higher Education Act 1992 to secure that provision is made for assessing the quality of the higher education it funds, and to establish a Quality Assessment Committee to advise on the discharge of that responsibility.
2. HEFCE contracts with QAA for the delivery of programmes of reviews and audits in higher education institutions (HEIs) and further education colleges (FECs). In 2001, the arrangements for assuring the quality of teaching and the standards of awards in HEIs were revised. Subject reviews were replaced with the quality assurance framework (QAF) which comprises institutional and collaborative audits, supplemented by the publication by each HEI of information about the quality and standards of its provision. The QAF is underpinned by the Academic Infrastructure, which is developed by the QAA on the sector's behalf and applies throughout the UK. This recognises the primary responsibility of each HEI to operate

its own robust internal mechanisms for quality assurance. The audits may be selectively followed up by QAA in accordance with published methods and protocols. In FECs, there is a programme of integrated quality and enhancement reviews (IQER). QAA may also engage with institutions under the terms of the published procedure for handling causes for concern in English HE and FE institutions.

3. HEFCE's statutory responsibility to secure quality assessment and the statutory role of the Quality Assessment Committee remain. The statutory role of the Quality Assessment Committee is now carried out by the Teaching, Quality, and the Student Experience Strategic Committee.

4. This is the twelfth agreement between HEFCE and QAA, and is the first to be agreed with the combined three year and annual framework described in clause 5 below.

5. This is a contract for services for the three years from 1 August 2009. The contract is in two parts: Part A sets out the relationship between the parties and the framework within which services will be provided, and will be valid for the three-year period (although may be subject to adjustment by mutual agreement or cancellation in accordance with Part A Clauses 49 to 53); Part B consists of specifications and schedules setting out the annual programmes of work, price and payment schedules for that work, which will be agreed in accordance with the procedure set out in Part A in July 2009 (for the year 2009-10), July 2010 (for the year 2010-11) and July 2011 (for the year 2011-12). Each specific Part B will form part of the contract once it has been agreed.

6. By 31 July in each academic year, it is intended that HEFCE will produce an accompanying letter to the annual contract setting out its intentions for the longer term within the current context of HE. The draft of this letter will be shared with the QAA prior to 31 July. The correspondence is intended to assist future planning but will not create a contractual or any other legal obligation for either party.

7. In recent years, QAA has taken the lead, on behalf of the UK higher education sector, in developing a framework for codifying and articulating expectations of key aspects of the quality of learning and teaching, and of the academic standards which awards should signify. The main elements of this framework, also referred to as the "Academic Infrastructure", are, as it applies in England, QAA's "Code of practice for the assurance of academic quality and standards in higher education", the framework for higher education qualifications for England, Wales and Northern Ireland and the subject benchmarks for broad subject areas. The programmes offered to students by institutions are described in programme specifications which are part of this framework. QAA has the primary responsibility for securing the continuing currency, validity, relevance and utility of the Academic Infrastructure, on behalf of the higher education sector. The interest of HEFCE is in securing that that responsibility is discharged effectively in England in order that the quality assurance methods can be successfully carried out. To that end, QAA has undertaken to keep the Academic Infrastructure under review, and from time to time propose to Universities UK, GuildHE,

HEFCE and other interested parties, actions that should be taken to develop, update and amend it as necessary. The activities proposed each year in pursuance of that responsibility will be stated in QAA's annual operating plan. HEFCE will each year consider the activities proposed in the operating plan, and may itself propose to QAA from time to time, in consultation with Universities UK and GuildHE, aspects of the Academic Infrastructure which in its view and in relation to its responsibilities in England should be developed, updated or amended, taking into account its UK-wide nature.

8. QAA has a significant role to play in promoting the continuous improvement of quality and standards of learning and teaching in higher education. QAA collaborates with the Higher Education Academy (and the sector, students and other stakeholders) to do this and will work with the Academy to develop a co-ordinated programme of enhancement activities.

9. In order to support the Government's principles of good regulation, HEFCE and QAA are signatories to the Higher Education Regulatory Review Group (HERRG) Concordat of May 2006 and are committed to the principles of good regulation set out in the Concordat. HERRG was discharged in 2008. HEFCE and QAA look forward to working with its successor.

PART A: FRAMEWORK FOR SERVICES

10. Now it is hereby agreed as follows:

Definitions and Interpretation

11. In this contract:

- a. "Academic Year" shall mean the period commencing 1 August in any calendar year and ending 31 July in the following calendar year;
- b. "Higher Education Institution (HEI)" shall have the same meaning as in the Further and Higher Education Act 1992;
- c. All definitions and interpretations relating to QAA audit and review activity are set out in schedule 1;
- d. References to Recitals, Clauses and Schedules shall be to recitals and clauses of, and schedules to, this contract.
- e. References to an Act of Parliament shall be to the Act as amended or re-enacted from time to time and to any subordinate legislation made under it.
- f. References to this contract shall be to the recitals, Part A, and the Part B in force at the relevant time.

TERM

12. The framework for services (Part A) will be implemented throughout the duration of the contract for the period 1 August 2009 to 31 July 2012. Details of the specific services and financial arrangements, provided in the specification and schedules (Part B), will be reviewed (and as appropriate agreed and revised) during each academic year that the contract remains in force. Notwithstanding the date of execution of this contract the date of commencement shall be 1 August 2009, and will be renewed to continue in both August 2010 and August 2011 unless and until terminated in accordance with its terms.

13. The expectation of both parties is that Part A will be reviewed in January 2012, and that a similar contract to this contract will be entered into at that time. For the avoidance of doubt, neither party shall be obliged to agree either to extend or to replace this contract and each party shall have the absolute discretion whether it does so, and if so upon what terms. Such review will be concluded by 31 May 2012. Details of the specific annual programmes of work, contract prices and payment schedules will be agreed in accordance with Part A Clauses 5, 13 and 14. Part B of the contract will be updated and renewed in July 2010 and July 2011.

RELATIONSHIP BETWEEN HEFCE AND QAA

14. The parties shall, by way of performing their respective obligations under this contract, co-operate together to secure, enhance and promote the quality and standards of higher education as detailed more specifically elsewhere in this agreement.

15. The main contact for QAA within HEFCE shall be the Policy Officer with responsibility for liaison with QAA. The main contact for HEFCE within QAA shall be the Head of Corporate Affairs.

16. In furtherance of Part A Clause 15 and in order to promote regular dialogue and flows of information so as to enhance the effective discharge of their respective functions, HEFCE and QAA shall agree detailed arrangements for regular communication and exchange of information between the parties.

17. Without prejudice to the generality of Part A Clause 16, HEFCE and QAA shall so conduct themselves that there shall be:

- a. co-ordination over public relations with advance notice of relevant major public statements; including ongoing exchanges of information between communication/media teams.

b. as necessary, and to facilitate the relationship, appropriate and timely flows of information between the parties about plans, programmes and progress; exchange of papers; and staff liaison on policy issues, including prior notice of major policy matters.

18. QAA shall provide to HEFCE the full list of prospective publications for the coming year by 30 June in each year with an updated version sent to HEFCE by 1 February in each year. HEFCE may request pre-publication copies of any of the publications on the list provided by QAA. Requested pre-publication copies will be sent to HEFCE by email three working days before the publication is due to go live on the QAA website. Pre-publication copies are provided for information, not for comment.

19. QAA shall provide to HEFCE full details of QAA's proposed annual operating plan for the year commencing on 1 August, by 15 June in each year. QAA shall amend such plan in accordance with any reasonable representations HEFCE may make where such representations, in HEFCE's reasonable opinion, touch upon or affect the services to be provided by QAA under this contract. In particular, HEFCE and QAA shall agree by 30 June in each year QAA's annual relevant objectives, performance measures and the budget for the following year 1 August to 31 July, in relation to the work to be carried out under this contract. Final confirmation of the proposed annual operating plan and budget is subject to endorsement at the July QAA Board meeting.

20. If QAA acquires any information, whether or not published, which may be helpful to HEFCE in fulfilling its functions under this contract or its statutory functions under the Further and Higher Education Act 1992, it shall, where reasonable in the circumstances, pass that information to HEFCE, except in cases where that information has been given to QAA in confidence or is otherwise sensitive. HEFCE shall likewise, where reasonable in the circumstances, pass information to QAA where that information would be relevant and helpful to QAA in discharging its functions under this contract, except in cases where that information has been given to HEFCE in confidence or is otherwise sensitive.

21. QAA shall consult with HEFCE in advance of any wider consultation about any proposals which have a bearing on HEFCE's statutory functions under the Further and Higher Education Act 1992, and shall take full consideration of the outcomes of such consultation. HEFCE shall consult with QAA about any proposals which are relevant to the services to be provided by QAA under this contract and shall take full consideration of the outcome of such consultation.

22. Any advice and information to be provided by one party to the other party under this contract shall be accurate to the best of the providing party's knowledge and belief, having made all reasonable enquires, and timely.

23. QAA will, so far as is appropriate and relevant to the work of QAA, work within the principles of corporate governance and public life set out in the Cadbury, Greenbury, Hampel, Higgs and Nolan reports and the Committee of University Chairmen (CUC) guides 2004 and

2009 and the requirements of the Charities and Companies Acts 2006, as interpreted through the QAA Board's own Code of Practice.

24. Nothing in this contract shall create an agency, partnership or employment relationship between the parties.

ASSURANCE ARRANGEMENTS

25. QAA shall:

- a. Subject to Part A Clause 26, use the funds provided to it by HEFCE under this contract solely in pursuance of the services and activities stated in this contract, and require its external auditors to state in their report whether this has happened.
- b. Ensure that the services provided by it under this contract are delivered in an economic, efficient and effective manner.
- c. Promptly notify HEFCE in writing of any event that has, or is likely to have, a material adverse impact on the financial position of QAA, as soon as this becomes apparent.

26. HEFCE recognises that sums payable to QAA under this contract include a contribution towards QAA's general overheads and running costs. It further recognises that, within a method which integrates review at the level of the whole institution and at more detailed levels of subject area or theme, and the costs of which are met through funding contributions from several parties, exact attribution of costs is more difficult to achieve. Nonetheless, QAA shall use its best endeavours to identify and monitor the costs attributable to the activities covered by this contract and to ensure that HEFCE's contribution shall be no more than is fair, reasonable and proportionate in all the circumstances.

27. In furtherance of Part A Clause 26, QAA shall set up and maintain an effective system of internal audit that covers all its records, assets, personnel and premises.

28. QAA shall provide HEFCE with access to such of QAA's information, records, personnel and assets as HEFCE feels it needs in order to monitor the audit system set up by QAA pursuant to Part A Clause 27 and discharge HEFCE's functions in respect of public funds. Without prejudice to the generality of the foregoing, QAA shall provide HEFCE with copies of its annual report of QAA's Audit Committee, external auditors' management letter and its internal auditors' annual report and a copy of its audited financial statements by 31 December in the year to which the accounts relate.

29. QAA will provide to HEFCE each quarter (including the fourth quarter) a summary financial statement, and commentary explaining the statement, signed off by the Head of

Finance of QAA. Such statement will be provided to HEFCE no later than one week following the meeting of the first QAA Board held during the quarter following the quarter being reported upon; or in the absence of any such meeting taking place or in the event of such meeting being adjourned to a date beyond the end of the quarter, the statement will be provided within 35 days of the end of each quarter being reported upon. It will be in a form specified from time to time by HEFCE and will include:

- an income and expenditure account
- a balance sheet
- a division of expenditure between the direct costs of the services covered by the contract, and the overhead costs attributable to those services

(each of the above items showing variances of expenditure against budget and showing the annual budget and, from the third quarter onwards, latest forecast for the year)

- a forward cash flow projection from the end of the quarter being reported upon until the end of the financial year
- a cash flow statement.

30. In addition, QAA will provide HEFCE with a Quarterly Project Income and Expenditure Report for each agreed project, on a similar basis to the Summary Financial Statement.

31. A representative of HEFCE may, under supervision, view the QAA management accounts supporting all financial statements. A senior finance officer of QAA will be available upon reasonable notice to answer relevant questions during the supervised access.

32. If in HEFCE's reasonable opinion there has been a material breakdown of internal financial control within QAA and/or a substantial non-performance of the terms of this contract then, without prejudice to the terms of Part A Clauses 46 - 53, HEFCE may have the right to make representations to the directors and the chief executive of QAA, and QAA shall use its best endeavours to comply with any reasonable directions of HEFCE relating to the efficient and effective discharge by QAA of its functions under this contract.

33. Without prejudice to Part A Clauses 49 – 53, HEFCE reserves the right to appoint an independent third party to report on areas of performance of this contract by QAA which cause HEFCE concern. Before exercising this right HEFCE shall consult QAA and shall consider the results of such consultation. QAA shall co-operate with any independent third party appointed. HEFCE will make a copy of the report available to QAA when it is received.

34. HEFCE shall be entitled to inform any one or more of the following bodies of any material matters which come to its attention as a result of the monitoring referred to in Part A Clauses 28 to 33:

- Higher Education Funding Council for Wales;

- Scottish Funding Council;
- Department for Employment and Learning, Northern Ireland;
- Universities UK;
- GuildHE;
- Universities Scotland;
- Higher Education Wales;
- Department for Business, Innovation and Skills
- National Audit Office.

35. The books and records of QAA relating to the discharge of its responsibilities to HEFCE under this contract shall be open to inspection by the Comptroller and Auditor General as and when he requires in order to discharge his statutory duties as auditor of HEFCE.

Information requirements

Annual Reporting requirements

36. QAA shall by 31 January each year prepare and submit to HEFCE a report which:
- a. Provides a summary and overview of all review activity undertaken by QAA during the preceding academic year. This will incorporate institutional audit, mid-cycle follow up, collaborative provision audit, IQER, handling causes for concern and any other programmes that may be specified in Part B.
 - b. Identifies, and provides commentary on, the main themes and trends arising from these activities, and the inferences that may be drawn from them about the state of, and trends in, quality and standards in higher education.
 - c. Provides commentary on relevant developments to the Academic Infrastructure.
 - d. For IQER, institutional audit and mid-cycle follow up, includes a “Report on Evaluations”, being a report on institutions’, contract reviewers’, review co-ordinators’, auditors’ and (where applicable) subject specialist reviewers’ evaluation of IQERs, mid-cycle follow ups and audit visits undertaken in the preceding academic year. As well as evaluating the process, the report should assess the effectiveness and value of the

review method as it is perceived by the institutions reviewed as well as the reviewers, in relation to the maintenance and enhancement of quality and standards.

e. Distinguishes between different groups of HEIs and different groups of FECs, using such categories as may be relevant for the purpose.

f. Makes recommendations with a view to future action, by HE providers, QAA, HEFCE or other relevant parties, to sustain and improve quality and standards, and address any weaknesses.

g. Provides a summary and overview of quality enhancement activity undertaken with the sector and other relevant bodies, and the work of the QAA development and enhancement group.

37. In addition, by 31 December each year, QAA shall provide information which details the Agency's performance against its operating plan for the preceding year. This will take the form of QAA's Directors' Report after it has been approved by the Agency's Board.

Quarterly Reporting

38. QAA shall throughout the term of this contract provide quarterly to HEFCE a written summary of the results of IQERs, Collaborative Provision Audits, mid-cycle follow up and Institutional Audits completed in the preceding quarter, a list of any scheduled visits which have not been carried out and rescheduled dates for any visits which have not been carried out.

Reports to TQSE

39. The TQSE Committee has a statutory duty to provide the HEFCE Board with advice on quality assessment in the HE sector in England. As part of fulfilling this duty, TQSE provides an annual opinion to the HEFCE Board on the performance of the QAA against its contract deliverables and on the operation of the Quality Assurance Framework. To support TQSE in completing this duty the following reports will be provided to the Committee:

a. The results of audit and review activity to report to each meeting of TQSE, assembled and provided by HEFCE.

b. The QAA annual report referred to at Part A Clause 37, presented by QAA to TQSE at its March meeting.

c. An interim presentation, by QAA, to TQSE at its June meeting. This will include an update on progress between the start of the current contract year (1 August) and the end of the HEFCE financial year (31 March), a description of any general issues affecting the quality and standards across the sector, and an initial outline of QAA's operating plan for the subsequent contract year.

- d. Where necessary and given reasonable notice and support from HEFCE, provide ad hoc verbal updates to TQSE on QAA activity.

Other

40. As part of its general role in promoting the security and enhancement of quality and standards in higher education, QAA publishes a series of general reports and analyses arising from its audit and review activities. QAA will provide copies of such reports to HEFCE, and, if appropriate, present such reports to TQSE.
41. QAA shall keep detailed records of all material acts and things done by it in relation to the provision of services to HEFCE under this contract and at HEFCE's reasonable request shall make them available for inspection and/or provide copies to HEFCE.
42. QAA shall continue to maintain a risk register which shall detail all risks that QAA has identified that present a material risk of impacting on its delivery of services under this contract.
43. QAA shall continue to maintain a business continuity plan which shall set out disaster recovery arrangements for all appropriate risks identified in the risk register.
44. HEFCE may inspect and comment on the risk register and business continuity plan on reasonable notice.

DEFAULT

45. Without prejudice to HEFCE's other rights and remedies under this contract or otherwise, if QAA fails or anticipates that it will fail to:
 - a. complete the IQERs in FECs, the Institutional Audits, mid-cycle follow ups or the Collaborative Provision Audit programme in HEIs in accordance with the Schedules defined in Part B;
 - b. provide to HEFCE any report or reports required to be provided by QAA pursuant to this contract;

then it shall at the earliest opportunity provide HEFCE with full details in writing of such default or anticipated default and of the revised timetables and remedial measures it proposes to adopt to resolve the situation. For the avoidance of doubt, if the default anticipated is sufficiently serious to amount to an anticipatory repudiatory breach of this contract, provision of notice under this clause shall not remove or postpone HEFCE's right to accept such a breach and terminate the contract.

46. Without prejudice to HEFCE's other rights and remedies under this contract or otherwise, in the event that any of the following events occurs:

- a. any IQER, Institutional Audit visit or Collaborative Provision Audit Programme visit does not take place as specified in Schedules defined in Part B: and/or
- b. QAA fails to publish any report in accordance with this contract;

then, notwithstanding the provisions of Clause 5 of Schedule 3, HEFCE shall be entitled:

- c. to withhold any payment in respect of such visit, or report as the case may be; and
- d. to withhold, in addition, an amount equivalent to the payment referred to in Part A Clause 47(c) to compensate HEFCE for the loss suffered by it as a consequence of QAA's failure to perform the services in accordance with this Contract until such time as the default in question has been remedied to the satisfaction of HEFCE, provided that, notwithstanding that the default may have been remedied, HEFCE shall be entitled to retain any sum which in its reasonable opinion represents the loss it has suffered as a result of QAA's default.

47. The parties acknowledge that the sum referred to in Part A Clause 47(d) represents a genuine pre-estimate of HEFCE's likely loss, but if all or any of such sum shall be held not to be so then, in each case, the sum shall be changed to make it so.

TERMINATION

48. Either party shall be entitled to terminate this contract forthwith by written notice to the other if that other party commits any serious breach of any of the provisions of this contract and, in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

49. In addition, in the event that HEFCE in its reasonable opinion considers that there has been a breakdown in its relationships with QAA and/or takes the view that it has lost confidence in QAA it shall discuss its concerns with QAA, which concerns shall be discussed at a meeting of the boards of QAA and HEFCE. HEFCE and QAA shall in good faith and using all reasonable endeavours attempt to resolve those concerns. If despite HEFCE's and QAA's efforts, HEFCE's concerns are not resolved to HEFCE's reasonable satisfaction, HEFCE shall be entitled, upon giving QAA not less than three months' written notice to that effect, to terminate this contract.

50. The rights to terminate this contract given by Part A Clauses 49 and 50 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned or any other breach.

51. If HEFCE is or will be, for any reason outside its reasonable control, unable to contract with QAA for the services provided under this contract (or very similar services) then the parties shall meet to discuss in good faith amendments which might be made to this contract which would enable HEFCE to continue to commission relevant services from QAA for the balance of the term of this contract. If such agreement cannot be reached within two months, HEFCE shall be entitled to terminate this contract on not less than three months written notice to QAA. Events outside HEFCE's reasonable control include, but are not limited to, lawful directions from the Secretary of State, material changes in HEFCE's funding, and legislative or other legal change. If this contract is terminated by HEFCE under this Part A Clause 52, HEFCE shall promptly reimburse QAA for

- a. all services performed by QAA in accordance with this contract up to the date of service of the notice of termination
- b. all costs incurred by QAA after the date of service of notice of termination which have been authorised in advance by HEFCE or which could not reasonably have been avoided.

52. QAA shall not, without HEFCE's prior written agreement (not to be unreasonably withheld or delayed), employ any staff in delivering services under this contract who are not employed on QAA's normal terms and conditions for its staff as applicable from time to time. This clause shall not apply to any genuinely self employed staff used by QAA in its delivery of services under this contract nor shall it apply to any short-term secondees, reviewers, auditors and assessors engaged but not employed by QAA to provide services under this contract.

MONITORING

53. HEFCE and QAA shall each nominate an officer (and deputy) to monitor the delivery of the services under this contract and to notify the party of which he/she is an officer of any deficiencies in the services provided. Until further notice this will be Alison Felton at HEFCE and Martin Johnson at QAA.

ADDITIONS

54. Save for the review and amendment of Part B in accordance with this Part A, the provisions of this contract may only be amended or modified by a prior agreement in writing signed by the respective chief executive officers of HEFCE and QAA.

55. On or before 1 June 2010 and 2011 and after consultation with QAA, HEFCE shall provide QAA with its proposed Part B for the academic year beginning on 1 August 2010 and 2011 respectively. The proposed Part B shall so far as possible be based on the Part B

applicable for the previous year, but for the avoidance of doubt HEFCE shall have the absolute discretion to vary the proposed Part B as it seems fit. Such variation may include the reduction of some or all services to nil, or the substitution of different (but similar) services for services currently delivered.

56. QAA shall indicate within three weeks of receiving the proposed Part B whether it is able to deliver the services requested, the price for those services, and / or any changes it proposes to the Part B for the forthcoming academic year.

57. If QAA does not propose changes to the Part B, HEFCE's proposed Part B shall be signed by authorised representatives of each party and shall be the Part B for the forthcoming academic year.

58. If QAA does propose changes, HEFCE and QAA shall meet as soon as reasonably possible to negotiate in good faith the content of Part B for the forthcoming academic year. If agreement cannot be reached by 1 August, HEFCE may at its absolute discretion either continue the contract based on Part B from the preceding academic year, mutatis mutandis, reduce or terminate the contract with immediate effect.

ASSIGNMENT

59. QAA may not at any time assign or sub-contract all or any part of its rights or obligations under this contract without the prior written consent of HEFCE.

NOTICES

60. Any notice to be given by either of the parties under this contract may be sent by post to the address set out above or to such other address as the addressee may have notified for the purposes of this Clause. Communications sent by post should be deemed to have been received 48 hours after posting and for proving service by post it should be necessary to prove only that the communication was contained in an envelope which was duly addressed and posted in accordance with this Clause.

EQUAL OPPORTUNITIES

61. QAA shall have a written equal opportunities policy that relates to all forms of unlawful discrimination and shall make a statement of such policy available to HEFCE upon request.

62. QAA shall ensure that, in carrying out its obligations under this Agreement, neither it nor any of its sub-contractors commits an act of discrimination rendered unlawful, by any applicable legislation including but not limited to the Equality Act 2006, the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 2005, The Employment Equality

(Age) Regulations 2006, or the Human Rights Act 1998, or any enactments modifying or replacing them.

63. In the management of its affairs and the evolution of its policies on equality and diversity, QAA shall co-operate with HEFCE in the light of HEFCE's statutory duties and QAA shall take such steps as QAA considers appropriate to promote race equality, equality of opportunity for disabled people and gender equality.

64. QAA will report annually on equal opportunities matters in the audited Annual Report of the Directors and Financial Statements.

FORCE MAJEURE

65. Neither party shall be deemed to be in breach of contract if a Force Majeure event directly causes either party to be unable to comply with all or a material part of its obligations under this contract. A Force Majeure event means the occurrence, after the date of the contract, of any event outside the control of the party affected by it, which has a serious impact on that party's ability to perform the contract, such as (but not limited or necessarily similar to):

- a. war, civil war or insurrection including riot, armed conflict or terrorism
- b. nuclear, chemical or biological contamination (unless the source or cause is the result of the actions of either of the parties to this contract)
- c. Fire, flood, interruption of an essential utility, industrial action (other than by the party's own staff).

REMEDIES AND WAIVER

66. No delay or omission on the part of either party in exercising any right, power or remedy provided by law or under this contract shall impair such right or remedy or operate as a waiver of it. Such a waiver shall only be effective if put in writing and signed by a duly authorised officer of the waiving party.

67. The rights, powers and remedies provided in this contract are cumulative and not exclusive of any rights, powers and remedies provided by law.

HEADINGS

68. The headings in this contract are for interpretation only and shall not affect its interpretation.

FREEDOM of INFORMATION

69. The parties acknowledge that the Freedom of Information Act 2000 (FOIA) applies to HEFCE and may in the future apply to QAA. No provision or Clause in this contract shall prevent either party from complying with any obligations they may have under FOIA. Both parties shall co-operate and aid one another so as to enable each party to achieve its FOI policy and FOIA obligations, as appropriate.

70. In the event that HEFCE receives a relevant request HEFCE may disclose (i) written communications between the parties in connection with this contract and (ii) all or any relevant part of the information or reports supplied hereunder, in accordance with the FOIA, environmental information regulation 2004 and the Data Protection Act 1998. Where appropriate HEFCE will consult with QAA before deciding whether or not to disclose information.

71. HEFCE will comply with any such requests in accordance with the FOIA, taking into consideration the code of practice issued under Section 45 of the FOIA, all applicable laws and regulations, including any legislation which supersedes the FOIA. HEFCE will also take into account its own internal policies on FOIA.

SEVERANCE

72. Any provision of this contract which is held to be invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof.

GOVERNING LAW AND JURISDICTION

73. This contract is governed by English Law. This contract and its appendices constitute the entire contracts between the parties hereto and supersede all negotiations, representations or contracts either written or oral preceding the contract. The currency of this contract is sterling or its legal successor.

SIGNED by Sir Alan Langlands)
for and on behalf of)
the HIGHER EDUCATION FUNDING)
COUNCIL FOR ENGLAND)

Dated:

SIGNED by Peter Williams)
for and on behalf of)
THE QUALITY ASSURANCE AGENCY)
FOR HIGHER EDUCATION)

Dated:

Part B: SPECIFICATIONS AND SCHEDULES

Basis for Carrying Out Review Activities

1. The basis for carrying out review activities in 2009-10 is set out in Schedule 1.

Basis for calculation of the contract price

2. The basis for calculation of the contract price for 2009-10 and payment for services is set out in Schedules 2 and 3, respectively. The payment schedule is attached as Schedule 4.

SERVICES TO BE PROVIDED

Quality assurance of higher education in further education colleges

Integrated Quality and Enhancement Review (IQER)

3. QAA shall:
 - a. by 31 July 2010 complete the IQER Developmental Engagement programme and Summative Reviews set out in Schedule 5 to this contract in accordance with the provisions of this contract and in particular Schedule 1. Schedule 5 will be provided to HEFCE by 30 September 2009.
 - b. Provide quarterly reports to HEFCE on the results of each Developmental Engagement and Summative Review, and immediate notification in any case where the QAA is aware of the likelihood of judgements of "limited confidence" or "no confidence" or "no reliance in the accuracy or completeness of public information" being made or have been made or where concerns are raised that the quality and/or standards at the FEC are considered currently to be at risk. QAA will provide such notification by sending to HEFCE a copy of the letter that it sends to the institution. That letter will be sent to HEFCE at the same time it is sent to the institution.
 - c. Provide HEFCE with a confidential copy of each institution's report setting out the findings of the Developmental Engagement within 15 QAA working weeks of the completion of the review.
 - d. Publish a report setting out the findings of the IQER Summative Review within 15 QAA working weeks of the completion of the review if the outcomes are "confidence" and "reliance". This will be extended by 15 weeks if the review team needs to carry out a second visit as set out in the *Handbook for Integrated Quality and Enhancement Review* (paragraphs 79-81). The deadline for the published report may be further extended if the institution concerned makes a representation to the QAA Board against a judgment of "no confidence" or "no reliance"

Quality assurance of higher education in HEIs, including collaborative provision

Institutional audit

4. QAA shall:
 - a. by 31 July 2010, complete the Institutional Audit Programme in Higher Education Institutions (HEIs) set out in Schedule 6 to this contract in accordance with the provisions of this contract and in particular Schedule 1.
 - b. Provide quarterly reports to HEFCE on the results of each such audit. In the case of “limited confidence” and “no confidence” judgements, HEFCE shall be notified as soon as these are confirmed by the audit team. QAA will provide such notification by sending to HEFCE a copy of the letter that it sends to the institution. That letter will be sent to HEFCE at the same time that it is sent to the institution.
 - c. Publish a report setting out the findings of the audit within 20 QAA working weeks of the completion of the review. This period may be extended if advice is sought from specialist advisers, in the case of a judgement of ‘limited confidence’ and in the case of a judgment of ‘no confidence’, where it may be further extended if the institution concerned makes a representation to the QAA Board against the judgment. A report on a mid-cycle review is provided to the institution and HEFCE, but is not published, as set out in the published IA method. These reports will be provided to HEFCE within 20 QAA working weeks of completion of the review
 - d. Undertake all necessary follow-up reviews in accordance with the published methods and protocols and address any causes for concern (as defined in Clause 6 of Schedule 1) about quality or standards under the terms of the published procedure for handling causes for concern in English HE and FE institutions and clauses B8-10 of this contract.

Collaborative Provision Audit

5. QAA shall:
 - a. by 31 July 2010, complete the programme of Collaborative Provision Audit in HEIs for 2009-10 as included within Schedule 7 to this contract in accordance with the provisions of this contract and in particular Schedule 1.
 - b. Provide quarterly reports to HEFCE on the results of such activity. In the case of “limited confidence” and “no confidence” judgements, HEFCE shall be notified as soon as these are confirmed by the audit team. QAA will provide such notification by sending to HEFCE a copy of the letter that it sends to the institution. That letter will be sent to HEFCE at the same time that it is sent to the institution.

- c. Publish a report setting out the findings of the audit within 20 QAA working weeks of the completion of the review. This period may be extended if advice is sought from specialist advisers, in the case of a judgement or 'limited confidence' and in the case of a judgment of 'no confidence', where it may be further extended if the institution concerned makes a representation to the QAA Board against the judgment.
- d. Undertake all necessary follow-up reviews in accordance with the published methods and protocols and address any causes for concern (as defined in Clause 6 of Schedule 1) about quality or standards under the terms of the published procedure for handling causes for concern in English HE and FE institutions and clauses B8-10 of this contract.
- e. Complete any necessary revisions of the collaborative provision supplement to the institutional audit handbook as a result of the recommendations of the QAFRG.

Teaching Quality Information

- 6. QAA shall:
 - a. As part of the institutional audit process, in accordance with the provisions of this contract and in particular Schedule 1, confirm that HEIs are:
 - i. Making the information detailed in Annex F of HEFCE 06/45 publicly available.
 - ii. Preparing to share external examiners' reports as a matter of course with the institution's student representatives in an appropriate manner.

Assurance of foundation degrees

- 7. QAA shall, throughout the contracted review activity, but primarily through IQER, gather information on examples of good practice and the quality and standards of foundation degrees across the sector, with a view to providing an evaluative report to HEFCE by 30 September 2009.

Other review activity in HEIs and FECs

Cause for Concern process

- 8. QAA shall identify and handle causes for concern in English institutions offering higher education programmes or awards in accordance with the details published on its website and the provisions of this contract, and in particular Schedule 1.

9. QAA will inform HEFCE within its quarterly reports of the number of occasions the process has been used in respect of HEFCE-funded institutions and immediately if the outcome of a Preliminary Enquiry indicates a prima facie cause for concern that requires Full Investigation.

10. QAA shall cover the costs of any Preliminary Enquiry. Costs relating to any Full Investigation will be agreed on a case by case basis between HEFCE and QAA and will be paid by HEFCE in addition to the amount specified in Clause 4 of Schedule 2 of this contract. This policy will be kept under review.

Other reviews

11. QAA shall undertake such other reviews as appropriate. The methods to be used and costs of any such review shall be agreed between QAA and the commissioning body, which may or may not be HEFCE, and do not form part of this contract.

Maintenance and development of quality assurance framework and the Academic Infrastructure

12. QAA shall:

a. Keep the Handbooks for IQER and Institutional Audit (including the supplement on collaborative provision audit) under review, and include, within the annual report specified in Part A, commentary on the need for revision of any element of the quality review processes covered by this contract.

b. Consult and advise HEFCE about any developments or revisions to the Academic Infrastructure which may affect HEFCE's interests in the assurance of teaching quality and include, within the annual report specified in Part A, commentary on such developments and their implications for the review processes covered by this contract.

c. Continue to contribute to the work that came from the Measuring and Recording Student Achievement Group in supporting the adoption and maintenance of national credit arrangements for HE, with a view to such arrangements being fully in place by 2010. The core activities carried out by QAA in this area are to contribute to the work of the Credit Issues Development Group established by UUK, GuildHE, and the Joint Forum for Higher Levels. The costs of these core activities are included in the contract price specified in Clause 4 of Schedule 2. Any cost for additional specific work relating to this activity shall be negotiated, and agreed, by correspondence between HEFCE and QAA.

d. Support HEFCE in developing and promoting the quality assurance of work based learning. The core activities carried out by QAA in this area are membership of

HE agencies working groups on employer engagement. The cost of these core activities is included in the contract price specified in Clause 4 of Schedule 2. The costs of any additional specific work relating to this activity above shall be agreed between HEFCE and QAA and will be in addition to the amount specified in Clause 4 of Schedule 2 of this contract.

e. HEFCE has welcomed QAA's involvement with the DIUS National Student Forum stakeholder group and QAA's initiation of an England and Northern Ireland cross sector student engagement group. HEFCE and QAA have worked with DIUS in providing a stakeholder response to the NSF first report. HEFCE and QAA will continue to support the implementation of work arising from the cross sector student engagement group.

f. QAA will promote the benefits of student involvement in quality management, engage students in the work of QAA, share effective practice and seek to minimise duplication of effort in this area of work. In this context students will become full members of audit teams during the 2009-10 year subject to any 'opt out' arrangements agreed after consultation with the sector.

g. In implementing its approach to student engagement, QAA will be clarifying and developing its own role as an information provider and working with other sector bodies and agencies to identify what information on quality and standards would be useful to potential and current students and clarify the nature and extent to which QAA, or others, can meet those needs. This includes QAA continuing to work with UCAS in identifying ways to improve the accessibility of relevant information for potential students.

h. HEFCE's share of the costs of the delivery of QAA's approach to student engagement including joint working, sharing effective practice information projects and the recruitment, training and deployment of student members of audit teams are included in the contract price specified in Clause 4 of Schedule 2 of this contract.

i. Support and advise HEFCE in its reflections on the relationship between quality assurance and quality enhancement policy. The core activities carried out by QAA in this area include the continued production of the *Outcomes from...* and *Quality matters...and Information Bulletin* series of publications, and bespoke publications summarising the outcomes of particular review and audit activity. QAA will also report on its work with the Higher Education Academy. The costs of these core activities are included in the contract price specified in Clause 4 of Schedule 2. The costs of any additional specific work relating to this activity above shall be agreed between HEFCE and QAA and will be in addition to the amount specified in Clause 4 of Schedule 2 of this contract.

- j. Support and advise HEFCE in policy development with regard to quality assurance where appropriate.
- k. Support and advise HEFCE where appropriate in addressing any relevant quality assurance issues arising from the Bologna Process.
- l. Continue to work in partnership with HEFCE and the Learning and Skills Council and relevant successor bodies to share available quantitative and qualitative information, where appropriate, in order to increase the effectiveness of information utilisation within these bodies and reduce the burden on the sector to provide additional data. The core activity carried out by the QAA in this area is to lead meetings and discussions between interested parties on the issue of information sharing. The cost of this core activity is included in the contract price specified in Clause 4 of Schedule 2. The costs of any additional specific work relating to this activity above shall be agreed between HEFCE and QAA and will be in addition to the amount specified in Clause 4 of Schedule 2 of this contract.
- m. Continue to coordinate the meetings of the England Discussion Group. These meetings allow informal exchange of views and ideas between QAA, GuildHE, Universities UK and HEFCE on QA activity in England. The core activity carried out by QAA in this area is the convening, and chairing, of annual meetings of this group. The cost of this core activity is included in the contract price specified in Clause 4 of Schedule 2. The costs of any additional specific work relating to this activity above shall be agreed between HEFCE and QAA and will be in addition to the amount specified in Clause 4 of Schedule 2 of this contract.
- n. To continue discussions with stakeholders in consideration of a QA Framework post 2011.
- o. To continue to work with HEFCE and HE sector representative bodies on work resulting from the TQSE and its sub-committee.

PAYMENT FOR SERVICES

- 13. The costs of all Clauses between 3 and 12 of Part B, with the exceptions of Clauses 10, 11 and 12 c.-d., g. and j.-m. are included in the total sum specified in Clause 4 of Schedule 2, below. In addition to the activities specified above HEFCE may invite QAA to undertake other review or development activities. If QAA consents to undertake such activities, their costs, methods and schedules, shall be separately agreed and shall form additional schedules to this contract.
- 14. The payment for the services provided in Part B is set out in schedule 3.

SCHEDULE 1

Basis for Carrying out Review Activities

IQER

1. QAA shall carry out activities relating to the “Integrated quality and enhancement review: England”, hereinafter called IQER, method in relation to all HEFCE funded courses provided in further education colleges, in accordance with the Handbook for integrated quality and enhancement review of higher education in further education colleges in England during the pilot academic year 2006-07 and subsequent review cycle 2007-08 to 2011-12.

Institutional Audit (IA) and Collaborative Provision Audit (CPA)

2. QAA shall carry out the Institutional and Collaborative Audit Programme in relation to HE institutions, in accordance with the method set out in the “Handbook for Institutional Audit: England” (QAA 112 06/06) and its supplement on CPA during the audit cycle covering academic years 2006-07 to 2010-11. This handbook also includes the method for mid-cycle follow up activity (QAA 112 06/06 paragraphs 82 – 90)

3. TQI requirements for institutions are set out in ‘Information on quality and standards in higher education: Final guidance’ (HEFCE 2003/51) and subsequently in the Review of the Quality Assurance Framework: Second Phase (HEFCE 06/45) and ‘Development of TQI and the NSS: outcomes of consultation’ (HEFCE Circular Letter 08/2007). QAA monitors adherence with these requirements through the Institutional Audit and collaborative audit processes, in line with the statements in the Handbook for Institutional Audit (QAA 112 06/06) and Annex F of HEFCE 06/45.

4. HEFCE recognises that QAA has a responsibility to offer confidential advice to the Privy Council on applications from organisations seeking degree-awarding powers and/or university title (guidance for applicant organisations, which includes a statement of the BIS criteria, is published on the QAA website). Higher education institutions wishing to apply for degree-awarding powers at a time when they might also be subject to institutional audit may discuss arrangements with QAA. Normally, institutions will be expected to complete their audit before engaging in the scrutiny process for degree-awarding powers.

Addressing causes for concern

5. QAA shall carry out the process for addressing causes for concern in accordance with the procedure for handling causes for concern in English higher and further education institutions published on the Agency’s website (<http://www.qaa.ac.uk/aboutus/policy/concern.asp>) and Part B, clauses 8-10, of this contract.

The Quality Assurance Framework

6. The Quality Assurance Framework (QAF) is defined in HEFCE 2005/35; and comprises for the purpose of this contract:
 - a. institutional audits by the QAA
 - b. collaborative provision audits, to supplement institutional audits, for those HEIs with large or complex collaborative provision
 - c. the publication of information about quality and standards through the Teaching Quality Information (TQI) web-site. This includes the results of the National Student Survey (NSS).
 - d. the Academic Infrastructure, as described in Clause 8 of Part A.

SCHEDULE 2

Basis for calculating the contract price

1. The basis on which the contract price for the year to 31 July 2010 (2009-10) has been calculated is as follows:
 - a. Costs are based on QAA's total organisational budgeted costs for 2009-10, less sundry income, such as interest received.
 - b. All costs relating directly to funder- or country-specific activities have been allocated directly to the country or funder to which they relate.
 - c. Direct costs supporting those activities, where they cannot be allocated simply, have been allocated as a percentage of direct review costs.
 - d. Other costs have been allocated on various bases designed to reflect the benefit derived by countries or funders from particular costs incurred.
2. The net cost, calculated as above, relating to activity to be funded by HEFCE and institutional subscriptions in England is £9,289,591.
3. Institutional subscriptions will be increased from August 2009 as agreed between QAA and the representative bodies. Income from subscriptions will contribute £3,314,879 in 2009-10. (N.B., the Financial Memorandum between institutions and HEFCE requires that all institutions subscribe to QAA.)
4. HEFCE will fund the balance of £5,974,712 and this is the price agreed in this contract, subject to Part B Clause 13. For the avoidance of doubt, the basis of the calculation of this price is set out above for transparency only.
5. HEFCE, Universities UK, GuildHE and QAA will keep the balance of funding between HEFCE and institutional subscriptions under review.

SCHEDULE 3

Payment for services

1. Subject to the provisions of Part A Clauses 49 – 53, HEFCE shall pay QAA the sum of £5,974,712 for all the services provided under Part B Clauses 3 to 12 inclusive of this Contract (subject to Part B Clause 13) in the period from 1 August 2009 to 31 July 2010 and in no circumstances shall HEFCE's liability exceed this sum for those services. That sum ("the contract price") includes provision for:

- a. Any VAT that may be applicable.
- b. The preparation of necessary guidance materials and the provision of training for those who will undertake the:
 - i. IQER activities;
 - ii. Institutional Audit Programme activities and Collaborative Provision Audit

2. The contract price is based on the provisional programmes of work set out in Schedules 5-7. Should the final schedules for those programmes show a different volume of work, provided this is reasonable and has been notified to HEFCE as soon as it became apparent, the parties will use all reasonable endeavours agree a variation to this contract.

3. The contract price shall be payable by HEFCE on a monthly basis, in accordance with the profile set out in Schedule 4 or as amended by agreement.

4. In accordance with established principles of public accounting, HEFCE must not make payments in advance of need. QAA will use its best endeavours to achieve cost-effectiveness and avoid waste in undertaking the activities covered by this contract. HEFCE will review each quarter the progress of expenditure against budget; and HEFCE reserves the right to reduce HEFCE payments to the Agency, or to amend the profile for payments, for subsequent quarters if there is evidence that actual spending on the services provided under this contract is significantly below the level of income received from HEFCE.

5. Without prejudice to HEFCE's maximum liability under this contract being £5,974,712, any payments made by HEFCE shall be without prejudice to any claims or rights which HEFCE may have against QAA and shall not constitute any admission by HEFCE as to the performance by QAA of QAA's obligations under this contract. Prior to making any payments to QAA, HEFCE shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against QAA.

SCHEDULE 4

Payment Profile 2009-10
(To be provided by QAA by 31 August 2009)

Year	Month	£
2009	August	
	September	
	October	
	November	
	December	
2010	January	
	February	
	March	
	April	
	May	
	June	
	July	
Total		£5,974,712

SCHEDULES 5 - 7

The IQER programme in FECs – September 2009 – July 2010

The Institutional Audit Programme September 2009 – July 2010

The Collaborative Provision Audit September 2009 – July 2010

This information is considered to be confidential and so is not published.