



**MORLEY COLLEGE
LONDON**

**SUPPLY-CHAIN FEES AND CHARGES POLICY
2020-2021**

POLICY OWNER:	CHIEF FINANCE OFFICER
APPROVAL:	GOVERNING BODY
LAST APPROVAL:	JULY 2020
NEXT REVIEW:	JULY 2021

Equality Analysis Screening

Equality analysis is a way of considering the effects on different groups protected from discrimination by the equality act. Consider if there are any risks within this policy that will adversely affect a particular group or a variety of groups. Are there any changes that need to be made to the policy itself or additional actions that need to be made to mitigate the risks? The protected characteristics are:

- Race
- Gender
- Disability
- Age
- Sexual Orientation
- Gender reassignment
- Religion and Belief
- Maternity and Pregnancy
- Marriage and Civil Partnership

Risks identified:

The equality policies and profile of a subcontracting partner may not be sufficiently robust, particularly in smaller or new providers.

This will be a key factor in the selection, due diligence and monitoring processes for actual and/or potential subcontracting partners.

Evidence used:

(data, consultation)

De facto circumstances.

Does this policy need a further action before it can be approved?
(changes made to policy or further equality analysis needed)

No

Policy Aim

This document aims to provide consistency of approach and transparency to the College's supply-chain fees and charges in relation to its subcontracting of provision.

Definition of Terms

Standard Management Fee – this fee is determined by the size of the subcontracted partnership contract (as per Maximum Contract Value figure), and the level of College support provided, and is the fee applied to all such contracts to account for standard costs incurred by the College through its management of these contracts.

Additional Contract Fees – sometimes there will be a need to apply an additional fee to offset direct associated costs incurred by the College in its pursuance of the partnership arrangement. These will be determined on a contract-by-contract basis.

Education and Skills Funding Agency (ESFA) – Government funded agency that supports provision for learners in further education who are aged 16 or over, also including all Apprentices.

European Social Fund (ESF) – European Union's (EU) main financial instrument for supporting employment in the member states of the European Union as well as promoting economic and social cohesion. This funding is associated with bid for projects linked to education and skills provision.

Where additional services are provided that are outside the scope of subcontracting (e.g. on-site accommodation) these arrangements will be governed by separate agreements.

1. Context

This policy is now a mandatory requirement of the ESFA, as stated in the Funding Rules 2019-2020. This policy supersedes all previous versions, where applicable, and is effective for the 2019–2020 academic year.

2. Reasons for subcontracting

The College recognises the need to offer as diverse a range of provision as possible, in as flexible and cost effective a way as possible. By working in partnership with subcontractors the College is able to do the following:

- Offer niche provision
- Engage with the wider community, thus increasing wider participation by attracting learners who are unable, or unwilling, to attend provision offered on campus
- Offer flexibility by delivering provision at times and venues convenient to learners and employers
- Be responsive to learner and employer requirements
- Ensure greater cost efficiency
- Engage with new markets
- Achieving growth, where this is consistent with College, local and regional strategic objectives.

3. Selection and Due Diligence

The College is committed to the proper selection and appointment of subcontracting partners. All potential partners will undergo a robust due diligence process reviewing financial, operational and quality aspects prior to appointment.

Where subcontracting partners are proposed to be reappointed for a further period, and annual due diligence process will be undertaken.

4. Improving Quality

The College is committed to continual improvement in teaching and learning, both in its own direct provision and in its subcontracted provision. A range of approaches are employed in order to do this, such as session observations and Self Assessment Reports. In terms of provision subcontracting specifically, the following processes are in place to help monitor quality of provision, and actively improve quality on an on-going basis:

- A robust schedule of Quality Assurance Audits that are carried out throughout the year
- Annual Reviews with target setting
- Regular management meetings between the College and all its subcontractors (with a minimum of one management meeting per term)
- Training and Development workshops (as appropriate)

5. Fees

Standard Management Fee – This fee is applied to all subcontracted contracts, and is the proportion of ESFA/ESF funding retained by the College to cover standard costs incurred through its management of these contracts. These costs include:

- Administration
- Quality assurance
- MIS functions relating to the submission of funding claims to the ESFA and ESF
- Provision of management meetings
- Provision of a dedicated Account Manager
- Provision of professional advice regarding ESFA /ESF funding matters
- Due Diligence support, guidance and checking.

Elements of the Standard Management Fee	All Partners
Partnership Management	5.5%
Partnership Administration	5.5%
Quality Assurance	2.0%
Data Inputting and Management	4.0%
MIS Functions	3.0%
<i>Total Management Fee</i>	20.0%

Additional Contract Fees – In some cases, the College will undertake further, additional functions in terms of managing the subcontracted provision, such as, but not limited to:

- registering learners with awarding organisations
- incurring the cost of examination fees
- incurring the cost of End Point Assessment (EPA) of Apprenticeship Standards
- responsibility for Internal Quality Assurance of provision
- increased Quality Assurance Audits and due diligence processes/monitoring if provision is new or is underperforming (it is acknowledged that new partnerships will require additional monitoring as they will be deemed High Risk provision until the quality of programme delivery and contract management has been evidenced over a minimum 12-month period)
- additional support necessitated due to subcontractors poor performance (in relation to delivery of provision, poor achievement rates or administration processes linked to provision)
- type of provision, for example more resources will be required to manage the administration of apprenticeship programmes than some other types of programmes

In these cases an Additional Contract Fee will be applied to the subcontracted provision as well as the Standard Management Fee. This fee will be agreed with subcontractors prior to the issuing of contracts, and will be reviewed prior to annual re-contracting.

The College will not take part in arrangements involving “second level” subcontracting, where a subcontracting partner proposes to subcontract delivery to a further partner.

The College will not engage in sub-contracting of Advanced Learner Loan delivery, or any other delivery category not eligible for sub-contracting as set out in the ESFA funding rules.

6. Payment Terms

Payment terms will be dependent upon the type and length of provision subcontracted:

- *Classroom Provision* – for programmes of short duration (12 weeks or less) payment will be split between an **on-programme payment** (made after enrolment forms and attendance registers have been received for the entirety of the funded programme and the College is satisfied that learner eligibility and attendance satisfies ESFA/ESF requirements) and an **achievement payment** (made upon receipt of proof of learner achievement that satisfies ESFA/ESF requirements). For programmes of longer duration overall payment may be further divided to allow for **on-programme payments** to be made mid-programme or at the end of each academic term or at other defined points during the programme; again payment will be based upon the receipt of appropriate attendance registers for specified periods of the programme and learner completion of the minimum qualifying period as stipulated in current funding guidance

and associated publications (as per Section 8 of this policy).

Upon receipt of satisfactory evidence the College will pay associated invoices within 30 days of the invoice date. This payment will be made by BACS transfer. However, if any supporting evidence is queried by the College then payment will be withheld until these queries are resolved, and payment will then be made at the earliest possible opportunity.

7. Policy Review

The College will review this policy annually. This review will take place in June of each year, and any policy revisions will be completed and published prior to the commencement of the next academic year.

8. Communication

Any changes to the policy will be communicated to existing subcontractors at contract management meetings. Furthermore, the College will distribute a copy of this policy to all potential new subcontractors and discuss it with them as part of the College's pre-contracting process.

9. Publication of Policy

An up-to-date copy of this policy will be posted on the College's website. Hard copies of the policy will be made available on request.

10. Related Publications

There are a number of Education & Skills Funding Agency (ESFA) publications that should be referred to in conjunction with this policy that are available at <https://www.gov.uk/government/publications> , some of the key documents are listed below:

Funding guidance for young people 2019 to 2020 rates and formula
[Education & Skills Funding Agency]

Funding guidance for young people: 2019 to 2020 funding regulations
[Education & Skills Funding Agency]

Funding guidance for young people: 2019 to 2020 sub-contracting controls
[Education & Skills Funding Agency]

Adult education budget (AEB): funding rules 2019 to 2020
[Education & Skills Funding Agency]

Adult education budget (AEB): funding rates and formula 2019 to 2020
[Education & Skills Funding Agency]

Apprenticeship funding and performance management rules 2019 to 2020
[Education & Skills Funding Agency]

11. Appendices

Policy Appendices	Description
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Appendix 2	Subcontractor Due Diligence Check – Stage 1
Appendix 3	Subcontractor Due Diligence Check – Stage 2
Appendix 4	Subcontracting reference request form
Appendix 5	Subcontractor Annual Due Diligence Check
Appendix 6	Reference Standard Contract

Appendix 1 - Business case for procuring a Subcontracting Partner

Campus:	
Case prepared by:	
Date:	

1. Business rationale (highlight all that apply)	Please input further details to support the business rationale
To temporarily expand provision to meet a short term need	
To provide immediate provision whilst expanding direct capacity. This might include working with sub-contractors to explore and learn about new frameworks or sectors prior to investment in resources	
Providing access to, or engagement with, a new range of customers	
Established delivery model and market that is best delivered independently	
A suitable for route for expansion in a new area / market	
We do not consider that the long term demand is sufficient to establish our own infrastructure	
To provide niche delivery where the cost of developing direct delivery would be inappropriate	
To support employers with a wide geographic requirement	

Appendix 1 - Business case for procuring a Subcontracting Partner

To support another provider to develop capacity/quality	
Other – please specify	

2. Further details	
Estimated contract value (N.B if contract value is over £75,000, an invitation to tender will need to be prepared)	
Proposed start date	
Proposed completion date	
Number of learners	
Where possible, please identify potential subcontracting partners	

3. Decision	
Approved by Executive	Yes/No (delete as appropriate)
Date	
Executive's reason(s) for declining business case (if appropriate)	
Approved by Governing Body	Yes/No (delete as appropriate)
Date	
Governor's reason(s) for declining business case (if appropriate)	

APPENDIX 2 - Subcontractor due diligence check - stage 1 (internal use only)



Name of subcontractor	
DD carried out by (name)	
Date	

Due diligence indicator	Risk rating score			Score
	Low 1	Medium 2	High 3	
Registered on ESFA's list of declared subcontractors. State UKPRN here:	Registered		Not registered	0
Registered on Companies House as active	Registered as active		Not registered as active	0
Does the subcontractor have an adequate credit rating?	Yes		No	0
Has the subcontractor not submitted their first statutory accounts?	No		Yes	0
Delivery experience of the subcontractor	More than 5 full years	2 to 5 full years	Less than 2 full years	0
Previous years' success rates	3% or more above benchmark	Within + or = 2% of benchmark	More than 20% below benchmark or no previous success data	0
Ofsted or SAR grading	Grade 1 or 2	Grade 3	Grade 4 or no grading	0
Delivery track record	Provision deemed to be low risk e.g. track record of successful delivery to EKC/CC	Medium risk e.g. some experience in managing this type of delivery at EKC/CC	Provision deemed to be high risk e.g. distance learning or challenging client group or no previous track record of success	0
Audit and QA measures	Compliant and no actions or recommendations	Mainly compliant by recommendations to improve	Not compliant and actions required to improve or no previous audit as new provision	0
				0

Total score	Risk rating and action
up to 10	Low risk - proceed to stage 2 of due diligence
11 to 16	Medium risk - refer to Director of Business Training
17 or more	High risk - do not proceed to stage 2 of due diligence. Inform Director of Business Training

APPENDIX 3 - SUBCONTRACTOR DUE DILIGENCE - STAGE 2

Please complete this questionnaire electronically and provide responses to **all** questions. Documentation referenced in **blue text**, must be submitted with the completed questionnaire and marked with the relevant reference number in column A. When completed, please return the questionnaire and supporting documentation to donna.higbee@eastkent.ac.uk



Part 1: Organisational details			
Question	Response	Evidence reviewed (College use only)	Notes (College use only)
1 Trading name of organisation			
2 UKPRN			
3 Registered name as it appears on the UKRLP			
4 Legal name of organisation (if different from trading name)			
5 Legal status (Public Limited Company, Limited Company, Limited Liability Partnership (LLP), Statutory Corporation e.g FE College, Other - please specify)			
6 Address as it appears on UKRLP			
7 County			
8 Postcode			
9 Key contract name			
10 Key contact job title			
11 Key contact email address			
12 Key contact telephone number			
13 Website address			
14 Company registration number (if this applies)			
15 Charities or other registration number (if this applies)			
16 Date of registration (if this applies)			
17 Registered company address (if different from the above)			
18 Are you registered for VAT? If YES, please provide VAT registration number			
19 ICO registration number and expiry date (for the purposes of processing personal data)			
20 Name of bank			
21 Address of bank			
22 Sort code			
23 Account code			
24 Account name			
		0	

Part 2: Business standing, continuity, insurance, reliance, public funding, statutory compliance			
Question	Response	Evidence reviewed (College use only)	Notes (College use only)
25	Does your organisation currently hold or has it previously held a direct contract with the funding agency with a cumulative value in excess of £100,000 PA? (If previously held, provide brief details of the reasons that the contract(s) is/are no longer held)		
26	Do you have a business continuity strategy and plan for the subcontracted learners? If YES, please include a copy.		
27	Do you have Public Liability insurance cover to a minimum of £10m per claim? Please include certification.		
28	Do you have Employer's Liability insurance cover to a minimum of £10m per claim? Please include certification.		
29	Do you have Professional Indemnity insurance cover to a minimum of £5m per claim? Please include certification.		
30	Can you supply copies of your audited accounts for the most recent two years ? If YES, please include documentation.		
31	Have any persons occupying positions of financial authority in your organisation (Directors, Company Secretary etc) ever been or are currently in bankruptcy, insolvency, compulsory wind up, receivership or other relevant proceedings? If YES, please give further details.		
32	Has your organisation ever had a conviction or prosecution (or are there any cases pending) for a breach of legislation in relation to health and safety, data protection, employment, equality, safeguarding, anti bribery, tax, social security or other? If YES, please give details.		
33	Do you embed the principles of Prevent and ensure that there is no risk of inadvertent funding/support of extremist organisations? Please give details.		
34	Is your organisation/has your organisation been subject to intervention activities by the ESFA? If YES, please give details		
35	Has your organisation had sanctions against it imposed by an awarding body? If YES, please give details		
36	Has your organisation ever been removed from a contract prior to its intended close date for failure to meet minimum levels of performance or for any other reason? If YES, please give details.		
		0	

Part 3: Awarding organisation's details, inspection outcome and Quality Assurance			
Question	Response	Evidence seen (College use only)	Notes (College use only)
37	Please provide evidence of centre approval from an Awarding Body for the qualifications that you are proposing to deliver.		
38	Have you had a full inspection or re-inspection by Ofsted ? Please give dates for the last inspection and overall grades for Leadership and Management and Overall Effectiveness		
39	Do you hold certification from relevant awarding organisations to delivery IAG or other support services ? If YES, please provide copy of certification		
40	Do you undertake an annual self assessment of training activities in accordance with a recognised quality framework and produce results in a written report? If YES, please provide a copy.		
41	Do yo have a procedure for the admissions and enrolment of students to include eligibility checks. If YES, please provide documentation		
42	Do you hold student results/achievement data for the past three years ? If YES, please provide copies.		
43	Do you directly employ staff? Can you provide evidence of the fact that you do not subcontract?		
44	Do you produce a continuous improvement plan based on your annual self assessment?		
45	Do you have established process to identify and support learners with additional needs ?		
46	Do you have an established process for the initial assessment of learners ?		
47	Do you have an established process for monitoring the progress of learners and for identifying and managing learners who are at risk of not achieving?		
48	What IAG do you give to the learner a) at the start b) during the course c) when they complete/leave?		
			0

Part 4 - other information to be provided by the subcontractor. *Items 66 and 67 will be requested after a contract is signed. However, please confirm here that your organisation will be able to provide this information if it is contracted.

Type	Response	Evidence seen (College use only)	Notes (College use only)
49	Organisational structure including names of Directors, Finance Accounting Officers and other relevant positions		
50	Name, address, contact telephone number and email address of two business referees, one of which must be a current College		
51	Health and Safety Policy		
52	Health and safety risk assessments, fire risk assessments, premises safety certification (fire, electricity etc)		
53	Safeguarding and Prevent Policy		
54	Quality Assurance Policy		
55	Equality and Diversity (or Equal Opportunities) Policy		
56	Data Protection Policy		
57	Anti-Bribery Policy		
58	Student Disciplinary Policy		
59	Complaints Procedure		
60	Learning Support Policy		
61	List of all staff who are delivering training/assessment at least 20 days prior to the start of the programme confirming each is an employee fo the Partner and paid through the Partner's PAYE scheme		
62	CVs for all staff delivering training/assessment		
63	List of delivery venue addresses		
64	Proof of centre approval/direct claim status (most recent certificate/letter of approval per proposed qualification) if applicable		
65	DBS clearance details for members of the delivery team		
66	Signed disclosure safeguarding form and copies of the delivery team's certificates for Safeguarding and Prevent		
67	IV details		
68	Quality kitemarks/Matrix certificate		
69	Details of other subcontractor agreements you have in place with other Colleges/providers or written confirmation if you have entered into any		
		0	

Appendix 4 – Subcontracting reference request

Referee name and address:	Reference request for:
	Insert subcontractor name and address here
Questions	Your responses
1. In which year did you commence contracting with the partner?	
2. Which funding streams did you contract with them for?	
3. Did the partner meet your contracted value? If not, within what % did they achieve the contract?	
4. Please state their retention, achievement and timely success rates for the following: a. Previous contract year b. Current contract year	
5. Who is your nominated contact within the organisation?	
6. Where the partner uses their own learners' paperwork, how does this meet quality and audit requirements?	
7. How frequently do you carry out quality/audit monitoring checks/visits?	
8. Have there been any action points as a result of these checks/visits and have they been completed within the agreed timescales?	
9. Are teaching and learning observations carried out and if so have there been any issues? What grade were the last two observations?	
10. Does the partner complete training reviews/self assessment reports?	
11. Have they hit profiled targets by month/total/year for learners' starts/completions?	
12. How do they compare to other partners you work with in terms of performance?	
13. Would you be prepared to re-contract with the partner?	
14. How would you rate their EV reports and any actions carried out?	
15. Are you aware if this partner is working with any other funding provider?	
16. Are there any other comments you wish to make in regard to your working relationship with this partner?	
Declaration	
I confirm that all the information I have provided is to the best of my knowledge, accurate and correct	
Print name	
Signature	
Date	

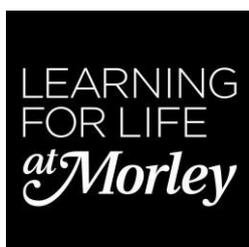
APPENDIX 5 - Subcontractor annual due diligence check (internal use only)



Name of subcontractor	
DD carried out by (name)	
Date	

Due diligence indicator	Risk rating score			Score
	Low 1	Medium 2	High 3	
Registered on ESFA's list of declared subcontractors. State UKPRN here:	Registered		Not registered	0
Registered on Companies House as active	Registered as active		Registered as inactive	0
Credit rating acceptable?	Yes		No	0
Prosecutions (or action pending) for breaches of legislation?	No		Yes	0
Awarding body accreditation up to date?	Yes		No	0
Any failings in safeguarding procedures?	No		Yes	0
All insurances up to date and certification provided?	Yes		No	0
Any significant issues raised during the last year's contract period?	No	Some, but these were dealt with satisfactorily	Yes	0
Previous years' success rates	3% or more above benchmark	Within + or = 2% of benchmark	More than 20% below benchmark or no previous delivery	0
Ofsted or SAR grading	Grade 1 or 2	Grade 3	Grade 4 or no grading	0
Delivery track record	Provision deemed to be low risk e.g. track record of successful delivery to EKC/CC	Medium risk e.g. some experience in managing this type of delivery at EKC/CC	Provision deemed to be high risk e.g. distance learning or challenging client group or no previous track record of success	0
Audit and QA measures	Compliant and no actions or recommendations	Mainly compliant by recommendations to improve	Not compliant and actions required to improve or no previous audit as new provision	0
				0

Total score	Risk rating and action
up to 13	Low risk - continue with contract
14 to 17	Medium risk - refer to Director of Business Training
18 or more	High risk - do not proceed with contract. Inform Director of Business Training



CONTRACT	
For the delivery of	AEB Funded Learning for Adult students
Commencing	1 st August 2019
Concluding	31 st July 2020



European Union
European Social Fund
Investing in jobs and skills

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This agreement is made between:

The College: **Morley College**

Address:

UKPRN:

And the Contractor:

Address:

UKPRN:

1. GENERAL PROVISIONS

1.1. Definitions and Interpretation

In this Contract:

"Affiliate" 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 with, that body corporate from time to time.

"Approval" and **"Approved"** means the prior written consent of the College or, where necessary (and as notified by the College), the Chief Executive.

"Auditor" means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or any internal auditor or any other body appointed by the Chief Executive from time to time.

"Breach" means:

- (a) a Default which constitutes a breach of this Contract; or
- (b) a breach of any of the following Clauses: Clause 1.9 (prevention of Fraud); Clause 2.6 (Performance Improvement Process); Clause 4.2 (non-discrimination); Clause 5.1(the College data); Clause 5.2 (Data Protection Act); Clause 5.5 (freedom of information); Clause 5.11 (provision of management information) Clause 5.12 (records and audit access); Clause 6.1 (transfer and sub-contracting); Clause 6.3 (Contract Amendment).

"Breakage Costs" means any costs payable for early termination of contracts entered into by the Contractor prior to receipt of notice of termination incurred by the Contractor directly as a result of the termination of this contract which:

- (a) would not have been incurred had this contract continued until its natural expiry; and
- (b) relate directly to the termination of the services; and
- (c) are unavoidable, proven, reasonable, and not capable of recovery; and
- (d) are incurred under arrangements or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms.

"Chief Executive" means the Chief Executive of Education Skills Funding Agency.

"Commercially Sensitive Information" means the information notified to the College in writing (prior to the commencement of the contract) this has been clearly marked as commercially sensitive Information comprised of information:

- (a) which is provided in writing by the Contractor to the College in confidence and/or
- (b) that constitutes a trade secret.

"Competition Law" means the national and directly effective legislation of any jurisdiction which governs the conduct of companies or individuals in relation to restrictive or other anti- competitive agreements or practices (including, but not limited to, cartels, pricing, resale pricing, market sharing, bid rigging, terms of trading, purchase or supply and joint ventures), dominant or monopoly market positions (whether held individually or collectively) and the control of acquisitions or mergers.

"Confidential information" means:

- (a) any information, which has been designated as confidential by either party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of either party, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential; and
- (b) all personal data and sensitive personal data within the meaning of the GDPR; and does not include any information:
 - i. which was public knowledge at the time of disclosure (otherwise than by Breach of Clause 5.4 (Confidential Information));
 - ii. which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
 - iii. which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
 - iv. is independently developed without access to the Confidential Information and does not include the contract in accordance with Clause 5.4.8.

"Contract Amendment" means the notice referred to in Clause 6.3 (Contract Amendment).

"Contract Period" means the period as described in Clause 1.3 (Contract Period).

"Contractor Software" means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the services.

"Crown" 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, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf and "Crown Body" shall be construed accordingly.

"Default" means any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant party or (in the case of the Contractor) the Staff or (in the case of the College) employees in connection with or in relation to the subject-matter of the contract and in respect of which such party is liable to the other.

"Deliverables" means an item, feature or service associated with the provision of the services or a change in the provision of the services which is required to be delivered by the Contractor at any stage during the performance of the contract, and which are set out in this contract.

"GDPR" means the General Data Protection Regulations - May 2018 and any subordinate legislation made under such 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.

"Environmental Information Regulations" means the Environmental Information Regulations 2004

together with any guidance and/or codes of practice issued by the Information commissioner or relevant government department in relation to such regulations.

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

"Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding any industrial action occurring within the Contractor's organisation.

"Funding Agency" means the Education Skills Funding Agency (ESFA), Education Funding Agency (EFA), or Greater London Authority (GLA).

"Fraud" means any offence under laws creating offences in respect of fraudulent acts or at common Law in respect of fraudulent acts in relation to the contract or defrauding or attempting to defraud or conspiring to defraud the College or the Crown.

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

"Information" has the meaning given under section 84 of the FOIA.

"Intellectual Property Rights" and **"IPRs"** means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

"Law" means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.

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

"Minimum Performance Levels" means in relation to the Contractor, the minimum performance levels for each programme to which the services must be provided, as set out in Appendix 2, schedule 1.3.

"Minimum Service Levels" means the set of service levels to which the services must be provided, as

agreed between the parties and set out in Appendices 1-3.

"Month" means calendar month.

"Performance Improvement Notice" means a written notice given by the College to the Contractor pursuant to Clause 2.6 (Performance improvement Process) to initiate the Performance Improvement Process

"Performance Improvement Plan" means the plan agreed in accordance with Clause 2.6 (Performance Improvement Process) for the resolution of a Contractor's Default.

"Performance Improvement Process" means the process for resolving certain of the Contractor's Defaults as set out in Clause 2.6 (Performance Improvement Process).

"Pre Existing IPR" means any Intellectual Property Rights vested in or licensed to The College or the Contractor prior to or independently of the performance by The College or the Contractor of their obligations under the contract and in respect of The College includes software, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs.

"Premises" means the delivery sites where the services are to be supplied, as set out in Appendix 2, Schedule 1, and Section 2 - Approved delivery postcodes. In addition, to the Contractor's registered address.

"Quality Standards" means the quality standards imposed by the relevant awarding body for the qualification(s) being delivered.

"Replacement Contractor" means any third party service provider appointed by the College to supply any services which are substantially similar to any of the services and which the College receives in substitution for any of the services following the expiry, termination or partial termination of the contract.

"Request for Information" shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

"Service Failure" means a failure by the Contractor to deliver any part of the services in accordance with:

- (a) any of the Minimum Performance Levels, and/or
- (b) any of the Minimum Service Levels.

"Staff" means all persons employed or engaged by the Contractor (and/or each sub- Contractor) to perform its obligations under the contract together with the Contractor's (and/or each Sub- Contractor's) servants, consultants, agents, volunteers, suppliers and sub-Contractors used in the performance of its obligations under the contract.

"Sub-contract" means any contract or agreement or proposed contract or agreement between the

Contractor and any third party whereby that third party agrees to provide to the Contractor the services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the services or any part thereof.

"Sub-Contractor" means the third party with whom the Contractor enters into a sub-contract or its servants or agents and any third party with whom that third party enters into a sub- contract or its servants or agents.

"VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

1.2. Interpretation

The interpretation and construction of the contract shall be subject to the following provisions:

- (a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) Words importing the masculine include the feminine and the neuter;
- (c) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (g) Headings are included in the contract for ease of reference only and shall not affect the interpretation or construction of the contract.

1.3. Contract Period

The contract shall take effect on the date it is signed by both parties and shall expire on the last planned end date of the cohort of learners listed, unless it is otherwise terminated in accordance with the provisions of the contract, or otherwise lawfully terminated.

1.4. Contractor's Status

At all times during the Contract Period the Contractor shall be an independent Contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the parties and, accordingly, neither party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other party save as expressly permitted by the terms of the contract.

1.5. Entire Agreement

1.5.1. This contract constitutes the entire agreement and understanding between the parties in

respect of the matters dealt with in it and supersedes, cancels or nullifies any previous ' agreement between the parties in relation to such matters.

- 1.5.2. Each of the Parties acknowledges and agrees that in entering into the contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (*whether negligently or innocently made*) other than as expressly set out in the contract. The only remedy available to either party for any such statements, representation, warranty or understanding shall be for Breach of contract under the terms of the contract.
- 1.5.3. Nothing in Clauses 1.5.1 or 1.5.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 1.5.4. In the event of and only to the extent of any conflict between the clauses of the contract, the specification, the Contractor guidance and any document referred to in the clauses of the contract, the conflict shall be resolved in accordance with the following order of precedence:
 - (a) The clauses of the contract;
 - (b) Any other document referred to in the clauses of the contract.
- 1.5.5. The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original, but all counterparts together shall constitute one and the same instrument.

1.6. Notices

- 1.6.1. Except as otherwise expressly provided within the contract, no notice or other communication from one party to the other shall have any validity under the contract unless made in writing by or on behalf of the party sending the communication.
- 1.6.2. Any notice or other communication which is to be given by either party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by facsimile transmission or electronic mail. Such letters shall be addressed to the other party in the manner referred to in clause 1.6.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two working days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 1.6.3. For the purposes of Clause 1.6.2, the address of each Party shall be as provided at the beginning of this agreement on page 4
- 1.6.4. Either Party may change its address for service by serving a notice in accordance with this clause 1.6 (*Notices*).

1.7. Mistakes in Information

- 1.7.1. Without prejudice to clause 3.1 (*Fees and Payments*), the Contractor shall be responsible for the accuracy of all documentation and information supplied to the College by the Contractor in connection with the supply of the services (*including all documentation, information and data supplied (or inputted) by the Contractor*) and (*subject to clause 1.7.2 below*) shall pay the College

any extra costs occasioned by any discrepancies, errors or omissions therein.

- 1.7.2. Without prejudice to clause 3.1 (*Fees and Payments*), where the level of discrepancies, errors or omissions arising out of, or in connection with, any documentation, information or data supplied (*or inputted*) by the Contractor, exceeds 15% of the total volume of documentation, information and data supplied (*or inputted*) by the contract in the Month in which the Contractor's Default arises, the Contractor shall pay all documented costs (*at the College's then prevailing rates*) and reasonable documented expenses incurred by the College for work carried out in connection with such Default and reimburse the College for any amount that they are required to pay to the Chief Executive as a result of such Default.
- 1.7.3. The provider will ensure that data returns made to the Chief Executive on the Individual Learner Record (ILR) include the Contractor and that this information reflects the delivery information supplied by the Contractor.

1.8. Conflicts of Interest

- 1.8.1. The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (*in the reasonable opinion of the College*), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor (*or of any Affiliate or of the Contractor's group*) or Staff and the duties owed to the College under the provisions of the contract.
- 1.8.2. The Contractor shall promptly notify and provide full particulars to the College if any conflict referred to in Clause 1.8.1 above arises or is reasonably foreseeable.
- 1.8.3. The College reserves the right to terminate the contract immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the College, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor (*or of any Affiliate or of the Contractor's group*) and the duties owed to the College under the provisions of the contract. The actions of the College pursuant to this Clause 1.8 (*Conflicts of Interest*) shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the College.
- 1.8.4. This Clause 1.8 (*Conflicts of Interest*) shall apply during the Contract Period.

1.9. Prevention of Fraud

- 1.9.1. The Contractor shall use its best endeavors, in accordance with Good Industry Practice, to prevent Fraud and irregularity by Staff and the Contractor (*including its shareholders, members and directors*) in connection with the receipt of monies from the College.
- 1.9.2. The Contractor shall notify the College immediately if it has reason to suspect that any Fraud or irregularity has occurred or is occurring or is likely to occur in relation to the services provided under this contract.
- 1.9.3. If there is any evidence of current or historic irregular financial or delivery activity the sub-Contractor must inform the Lead Provider. Irregular financial or delivery activity could include but is not restricted to:
 - Substantiated non-delivery of training when funds have been paid

- Sanctions imposed on the sub-Contractor by the awarding organisation
- Inadequate grade for the sub-Contractor by Ofsted
- Serious complaints and/or allegations by individuals working for the sub-Contractor and/or learners and/or other relevant parties
- Allegations of Fraud

1.9.4. Notwithstanding the general obligations in Clause 1.9.1 and Clause 1.9.2, the Contractor shall:

- (a) Have an established system that enables its Staff to report inappropriate behavior by colleagues in respect of any claims for payment under the contract;
- (b) Ensure that the Contractor's performance management systems do not encourage individual Staff to make false claims for payment under the contract;
- (c) Ensure a segregation of duties within the Contractor's operations between those Staff directly involved in delivering the services and those making claims for payment under the contract; and
- (d) Establish an audit system to provide periodic checks, at a minimum of six (6) monthly intervals, to ensure effective and accurate recording and reporting of performance of the services.

1.9.5. If the Contractor or its Staff is proven to commit any Fraud or irregularity in relation to the contract the College may:

- (a) terminate the contract with the Contractor with immediate effect and without liability by giving the Contractor notice in writing and recover from the Contractor the amount of any loss suffered by the College resulting from the termination including the cost reasonably incurred by the College of making other arrangements for the supply of the services and any additional expenditure incurred by the College throughout the remainder of the Contract Period;
- (b) recover in full from the Contractor any other loss sustained by the College in consequence of any Breach of this Clause 1.9 (*Prevention of Fraud*), whether or not the contract has been terminated; and/or
- (c) Where the College finds that the Contractor has deliberately submitted a false claim for payments in relation to the contract with the knowledge of its senior officers, recover in full from the Contractor the amount or value of such payment.

1.9.6. Without prejudice to the foregoing, if the Contractor or its Staff commits any Fraud or irregularity in relation to the contract, the Contractor shall also pay the College a sum of £5000 in the event of a minor Fraud or irregularity, or £15,000 in the event of a serious Fraud or irregularity, by way of liquidated damages. This does not in any way limit other remedies that may be recoverable because of a Fraud or irregularity of the Contractor.

1.9.7. Where the Contractor proposes to make any bonus or similar payment of any description to its Staff which are directly involved in the delivery of the Services, or have management responsibility for such staff, the Contractor must first notify the College of such proposal and respond to any questions about such proposals raised by the College in relation to the propriety of such proposals, and if the College so directs, the Contractor shall make changes to its proposals so as to address the College's reservations, and not implement such revised proposals without the College's express consent.

2. SUPPLY OF SERVICES

2.1. The Services

- 2.1.1. The Contractor shall supply the services during the Contract Period in accordance with the College's requirements as set out in the contract (*including, for the avoidance of doubt, the requirements set out in the appendices and service level agreement*). The College may inspect and examine the manner in which the Contractor supplies the services at the Premises during normal business hours without notice.
- 2.1.2. Without prejudice to any other rights or remedies that the contracting body has under the contract including without limitation Clause 2.5 (*Minimum Performance Levels and Minimum Service Levels*), if the College, following discussion with the Contractor, informs the Contractor in writing that, as a result of any Default by the Contractor, the College reasonably believes that any part of the services does not meet the requirements of the contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the College, the Contractor shall at its own expense re-schedule and carry out the services in accordance - with the requirements of the contract within such reasonable time as may be specified by the College.
- 2.1.3. The Contractor shall notify the College immediately upon becoming aware of any claim brought against the Contractor arising out of, or relating to, the provision of the services.

2.2. Manner of Carrying Out the services

- 2.2.1. The Contractor shall at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant awarding body.
- 2.2.2. The Contractor shall deliver the provision to an acceptable standard of quality, comply with the Performance Management Rules published by the Chief Executive as amended from time to time and notified to the Contractor in advance, and use all reasonable endeavors:
 - (a) To minimise dropout rates, deliver high completion achievement and success rates and appropriate progression;
 - (b) To meet the minimum levels of performance stated in Appendix 2 and as a minimum to meet the minimum Quality Standards that apply to the learning programme delivered;
 - (c) To ensure competent and appropriately qualified Staff deliver and assess learning. The Contractor is responsible for the professional development of their Staff and for meeting any minimum requirements which may be required by OFSTED or other regulatory authority;
 - (d) To offer equality of access to learning opportunities and close equality gaps in learning and outcomes
 - (e) To provide a safe, healthy and supportive environment, which meets the needs of the learners
 - (f) To deliver value for money and financial regularity
- 2.2.3. The Contractor shall ensure that all Staff supplying the services shall possess such qualifications, skills and experience as are necessary for the proper supply of the services
- 2.2.4. The Contractor must supply evidence of formal approval from the relevant awarding bodies to deliver the qualifications stated in Appendix 2.

2.3. Contractor's Staff

- 2.3.1. The College requires the Contractor to ensure that any relevant Staff employed in the provision of the services has undertaken a Criminal Records Bureau or a Disclosure and Barring service check. The Contractor shall ensure that no member of relevant Staff who discloses that he/she has a relevant conviction, or is found by the Contractor to have a relevant conviction (*whether as a result of a police check or through the Criminal Records Bureau check or otherwise*) is employed or engaged in the provision of any part of the services.
- 2.3.2. The Contractor shall provide training on a continuing basis for all Staff employed or engaged in the provision of the services.
- 2.3.3. The Contractor shall comply with all applicable legislation relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups Order (*Northern Ireland*) 2007 and the Protecting Vulnerable Groups Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof and adopt recruitment processes that comply with the Law and will ensure that children and vulnerable adult learners are protected.
- 2.3.4. The Contractor shall further use all reasonable endeavors to ensure that their Staff who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, where applicable.
- 2.3.5. If the Contractor persistently fails to comply with this Clause 2.3 (*Contractor's Staff*) to a material extent (and in the reasonable opinion of the College) such failure may be prejudicial to the interests of the Crown, then the College may terminate the contract with immediate effect and without liability by giving notice in writing to the Contractor, provided always that such termination shall not prejudice or affect any right of action or remedy. Which shall have accrued or shall thereafter accrue to the College
- 2.3.6. The College shall monitor the Contractor's performance of the services in accordance with the provisions of Appendix 1 and 2, 3 and the Service Level Agreement. The College will organise regular monitoring and spot checks of the Premises at any time to ensure that the Contractor is complying with its obligations under the contract and the Contractor shall co-operate fully, at its own cost, with the College and/or auditing or funding agencies. The College shall use reasonable endeavors to ensure that the onsite monitoring will not interfere with the delivery of the services by the Contractor, or the Contractor's other activities.
- 2.3.7. The College may appoint an assessor (which may be an internal or an external assessor, subject (in the case of an external assessor) to the external assessor entering into a non-disclosure arrangement and having the relevant expertise and competence), to participate in the monitoring of the Contractor's performance of the services and the Contractor will co-operate with the assessor and take all reasonable and necessary steps to implement recommendations made. Any changes to any services made as a result of a recommendation of any such persons shall be made in writing and in accordance with Clause 6.3 (*Contract Amendment*).
- 2.3.8. The Contractor shall ensure that The College (and its authorised representatives) have access upon reasonable notice to all relevant property, including the Premises, and information (and where requested are given a copy of such information) necessary to carry

out the monitoring referred to in this contract including putting in place arrangements to permit legal access to information as may be required.

- 2.3.9. With effect from the date of the contract the College and the Contractor shall meet at the times and with such frequency as specified in Appendix 2, Schedule 7 (*Meeting Schedule*) or as notified by the College to the Contractor from time to time.
- 2.3.10. The College shall monitor the Contractor's performance of the services to assess compliance with Competition Law. Where (in the reasonable opinion of the College), the Contractor has or may have engaged in any agreement, arrangement, practice or conduct which would amount to an infringement of Competition Law, without prejudice to any other rights or remedies that the College has under the contract the College shall be entitled to terminate the contract with immediate effect and without liability by notice in writing to the Contractor.

2.4. Customer Complaints

- 2.4.1. The Contractor shall have an internal dispute resolution procedure for dealing with complaints from Learners about the Contractor.
- 2.4.2. If the dispute between the customer and the Contractor cannot be resolved the dispute shall be referred to the Independent Case Examiner ("ICE") for mediation.
- 2.4.3. If the dispute cannot be resolved by mediation, the ICE will conduct a full investigation. In accordance with ICE's usual procedures, the Contractor shall have the opportunity (either directly or through the College) to present its case and any evidence during the investigation and, where possible. The College shall procure that CE shall share its draft report with the Contractor for comment before issuing a final version. The decision of ICE shall be final and binding upon the parties to the dispute. The ICE investigation shall carry a £5,000 fee paid by the Contractor, who will also be liable for any financial redress recommended by CE. In the event that the complaint against the Contractor is dismissed, no fee shall be payable. Any fees in respect of complaints that have been upheld against the Contractor and any financial redress due to the customer shall be paid within four Weeks of the date of the CE final investigation report.

2.5. Minimum Performance Levels and Minimum Service Levels

- 2.5.1. Contractors must deliver programmes in accordance with awarding body requirements.
- 2.5.2. The Contractor shall ensure that the services meet or exceed the Minimum Performance Levels and the Minimum Service Levels at all times from the commencement date.
- 2.5.3. The College shall monitor the Contractor's performance in respect of each of the Minimum Performance Levels and the Minimum Service Levels in accordance with the provisions of this Clause 2.5 (Minimum Performance Levels and Minimum Service Levels) and the requirements set out in Appendix 2.
- 2.5.4. The College and the Contractor shall have regular meetings to monitor and review the performance of the Contract, the achievement of the Minimum Performance Levels, the achievement of the Minimum Service Levels and the provision of the Services as set out in Appendix 2.

2.5.5. If there is a Service Failure, the Contractor shall:

- (a) take all reasonable steps to notify the College immediately of the Service Failure (and in any event as soon as the Contractor becomes aware that the Service Failure has occurred);
- (b) provide the College with a Performance Improvement Plan in accordance with Clause 2.66 (Performance Improvement Process);
- (c) deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring; and
- (d) carry out the actions identified in Performance Improvement Plan in accordance with its terms.

2.5.6. The College shall review the Minimum Performance Levels throughout the Contract Period. The College may elect to make changes to the Minimum Performance Levels from time to time. The College shall propose any such variation by serving a Contract Amendment Notice on the Contractor, and the Contractor shall promptly comply with the Contract Amendment procedure as detailed in Clause 6.3 ("Contract Amendment Procedure").

2.5.7. The College will provide high quality information advice and guidance on programmes in relation to this contract at no additional charge.

2.6. Performance Improvement Process

2.6.1. Without prejudice to The College's other rights and remedies under the contract, if the Contractor fails to comply with its obligations under Clause 2.5 (Minimum Performance Levels and Minimum Service Levels) and such Default is capable of remedy, the College may elect to operate the Performance Improvement Process as set out in this Clause 2.6 (Performance Improvement Process). If the Contractor commits such a Default, The College may elect to give a Performance Improvement Notice to the Contractor which shall specify the Default in outline and the actions the Contractor needs to take with respect to remedying the Default.

2.6.2. For the avoidance of doubt, The College shall be under no obligation to initiate the Performance Improvement Process if it serves notice to terminate the contract pursuant to its termination rights under the contract.

2.6.3. Within such timescales as notified by the College to the Contractor (taking into account all relevant circumstances in relation to the subject matter and nature of the Default) but in any event no less than five working days following receipt of a performance improvement notice the Contractor shall, following receipt of a Performance Improvement Notice, either:

- (a) submit a draft Performance Improvement Plan; or
- (b) inform the College that it does not intend to submit a performance improvement plan, in which event the College shall be entitled to terminate the contract by giving written notice to the Contractor with immediate effect and without liability.

2.6.4. The College shall either approve the draft Performance Improvement Plan within five working days (or such other period as notified by the College to the Contractor) of its receipt pursuant to clause 2.6.3(a), or it shall inform the Contractor why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Contractor shall address all such concerns in a revised Performance Improvement Plan, which it shall submit to the College within a minimum period of five working days (or such greater period as notified by the College to the Contractor) of its receipt of the

College's comments. If no such notice is given, the Contractor's draft Performance Improvement Plan shall be deemed to be agreed.

- 2.6.5. Once agreed, the Contractor shall immediately start work on the actions set out in the Performance Improvement Plan.
- 2.6.6. If, despite the measures taken under clause 2.6.4 a Performance Improvement Plan cannot be agreed within the minimum period of five working days (or such greater period as notified by the College to the Contractor) then the College may elect to end the Performance Improvement Process and refer the matter for resolution by the dispute resolution procedure set out in clause 9.2 (dispute resolution).
- 2.6.7. If a Performance Improvement Plan is agreed between the parties, but the Contractor fails to implement the Performance Improvement Plan in accordance with its terms and by the required remedial plan completion date, the College may:
 - (a) Give the Contractor a further opportunity to resume full implementation of the Performance Improvement Plan
 - (b) Escalate any issues arising out of the failure to implement the performance improvement plan to the principal and CEO of the College under the dispute resolution procedure set out in clause 9.2 (*dispute resolution*).
- 2.6.8. if, despite the measures taken under clause 2.6.7(b) or 2.6.7(c) the Contractor fails to implement the Performance Improvement Plan in accordance with its terms, the College may elect to end the Performance Improvement Process and refer the matter for resolution by the dispute resolution procedure set out in clause 9.2 (*dispute resolution*) or terminate the contract by giving written notice to the Contractor with immediate effect and without liability.

2.7. Step-in Rights

- 2.7.1. The College may itself provide or may employ and pay a third-party supplier to provide the services or any part of the services:
 - (a) if a Force Majeure event prevents the Contractor from providing part or all of the services in accordance with the contract in any material respect for more than one month; or
 - (b) if the Contractor fails (or the College reasonably believes that the Contractor is about to fail) to perform the services in accordance with the contract or to meet the Minimum Performance Levels of the Minimum Service Levels.
- 2.7.2. Reasonable costs in providing or procuring the provision of the services under clause 2.7.1(b) may be withheld or deducted from any sums due to or shall be recoverable from the Contractor by the College as a debt. any balance of fees after the deduction referred to in the previous sentence shall be paid to the Contractor in accordance with clause 3 (*Payment and fees*).
- 2.7.3. The Contractor shall co-operate with the College and any third-party supplier engaged by the College under this clause 2.7 (*step-in rights*). So that the College and the third party supplier can provide the services or any part of the services,
- 2.7.4. To the extent to which the services are being provided by the College or a third party supplier under clause 2.7.3 (*and subject to clause 2.7.5 below*), the Contractor shall be relieved of its obligations to provide the services and the Contractor shall not be liable for the acts or omissions of the College or

the third party supplier in providing the services.

- 2.7.5. The College may require the Contractor to resume delivery of the services once the parties are satisfied on reasonable grounds that the Contractor shall be able to resume delivery of the Services in accordance with this Agreement.

3. PAYMENT AND FEES

3.1. Fees and Payment

- 3.1.1. The College shall pay the Contractor in accordance with this clause 3.1 and Appendix 1, schedule 3 invoicing procedure.
- 3.1.2. The College shall pay the Contractor within 30 calendar days of receiving the correct and properly supported invoice.
- 3.1.3. The obligation to make payments to the Contractor rests with the College; the Chief Executive is not liable to make payments directly to the Contractor.
- 3.1.4. The Contractor must notify the College of any fees collected directly from students each Month.
- 3.1.5. The College and the Contractor shall agree the fee structure in advance.
- 3.1.6. The management fee will reflect the percentage of the funding rate paid to the College in addition to the fees collected for the qualification.
- 3.1.7. if the Contractor fails to send information to be put onto the College system in the prescribed manner or fails to submit the appropriate supporting information when necessary, the College shall not be in Breach of the contract (and nor shall any interest be due) if there is any delay in making a payment provided that the College has not unnecessarily delayed payment of the relevant claim.
- 3.1.8. Details of the Contractor's bank account and address must be notified to the College. The College shall send notifications of payments to that address.
- 3.1.9. At any time during the Contract Period (including, for the avoidance of doubt, at any time before and/or after payment by the College to the Contractor) the College and/or the Chief Executive shall be entitled to validate any claim for payment made by the Contractor. At all times the Contractor shall provide all necessary assistance as requested by the College or the Chief Executive.
- 3.1.10. Contractors must comply with the Chief Executive's funding requirements.

3.2. Recoveries of sums due

- 3.2.1. Wherever under the contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the College in respect of any Breach of the contract), the College may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the contract or under any other agreement or contract with the College.
- 3.2.2. Any overpayment by either party, whether of the fees or of vat or otherwise, shall be a sum of money recoverable by the party who made the overpayment from the party in receipt of the overpayment.
- 3.2.3. the Contractor shall make any payments due to the College without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the College to the Contractor.
- 3.2.4. All payments due shall be made within a reasonable time unless otherwise specified in the contract, in cleared funds, to such bank or building society account as the recipient party may from time to time direct.

4. STATUTORY OBLIGATIONS AND REGULATIONS

4.1. Prevention of Corruption

- 4.1.1. The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the College, the Chief Executive or any other public body or person employed by or on behalf of the College or the Chief Executive any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the contract or any other contract with the College, the Chief Executive or any other public body or person employed by or on behalf of the College or the Chief Executive, or for showing or refraining from showing favor or disfavor to any person in relation to any such contract.
- 4.1.2. The Contractor warrants that it has not paid commission or agreed to pay commission to the College, the Chief Executive or any other public body or any person employed by or on behalf of the College, the Chief Executive or any other public body in connection with the contract.
- 4.1.3. If the Contractor, its Staff or any person acting on the Contractor's behalf, engages in conduct prohibited by clause 4.1.1 or clause 4.1.2 or commits any offence under the prevention of corruption acts 1889 to 1916 or under the bribery act 2010, the College may:
 - (a) terminate the contract with immediate effect and without liability by giving notice in writing to the Contractor and recover from the Contractor the amount of any loss suffered by the College resulting from the termination;
 - (b) Recover in full from the Contractor any other loss sustained by the College in consequence of any Breach of this clause 4.1, whether or not the contract has been terminated; and/or
 - (c) recover in full from the Contractor the amount or value of any gift, consideration or commission.

4.2. Non-Discrimination

- 4.2.1. The Contractor shall not lawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the equality act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 4.2.2. The Contractor shall ensure that equality of opportunity is built into all aspects of Provision in the business planning process and the self-assessment process. The Contractor shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The Contractor shall use appropriate, specific and measurable improvement measures.
- 4.2.3. The Contractor shall take all reasonable steps to secure the observance of clause 4.2.1 by all Staff. Any Breach by the Contractor of clause 4.2.1 shall be a Breach of the contract for the purposes of clause 8.2 (*termination on Default*).
- 4.2.4. In delivering the services, the Contractor shall operate at all times in accordance with the diversity and equality requirements set out in the College single equality duty policy or such other diversity and equality requirements as notified by the College to the Contractor from time to time. Any Breach by the Contractor as notified by the College to the Contractor shall be a Breach of the contract for the purposes of clause 8.2 (*termination on Default*).

4.3. The Contracts (Rights of Third Parties) Act 1999

- 4.3.1. Without prejudice, a person who is not a party to the contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that act and does not apply to the Crown. If the College and the Contractor rescind this contract or vary any of its terms (including any release or compromise in whole or in part of liability) in accordance with the relevant provisions of this contract or terminate this contract, such rescission, variation or termination will not require the consent of any third party.

4.4. Environmental Requirements

- 4.4.1. The Contractor shall perform its obligations under the contract in accordance with the College's environmental responsibilities, which are 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.

4.5. Health and Safety

- 4.5.1. the Contractor shall ensure so far as is reasonably practicable that learning takes place in a safe, healthy and supportive environment, which meets the needs of learners. The Contractor will provide information to the College, as and when specifically requested, to give assurance that adequate arrangements exist for learner health, safety and welfare.
- 4.5.2. Where part of the learning takes place in an environment outside of the direct control of the

Contractor, the Contractor shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the Health and Safety of learners.

- 4.5.3. The Contractor shall notify the College immediately in the event of any incident occurring in the performance of its obligations under the contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury. The College must be informed immediately of the death of any learner which is as a result of work undertaken whilst in employment and who is undertaking a programme of learning under the terms of this contract.
- 4.5.4. The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the contract.
- 4.5.5. The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the College on request.
- 4.5.6. The Contractor shall ensure that all workplaces where learners reside meet the Health and Safety requirements and that the relevant documentation is sent to the College before learners are enrolled.
- 4.5.7. The Contractor shall monitor, and act on, any other harm to learners to the extent that they can reasonably be required to do so and where the harm could affect the quality of learning experience. Harm includes (but is not limited to) other incidents that cause absence from learning, any loss to the learner of any physical or mental faculty or any disfigurement, incidents of bullying and harassment.

5. PROTECTION OF INFORMATION

5.1. The College Data

- 5.1.1. The Contractor shall not delete or remove any proprietary notices contained within or relating to the College data.
- 5.1.2. The Contractor shall not store, copy, disclose, or use the College data except as necessary for the performance by the Contractor of its obligations under the contract or as otherwise expressly authorised in writing by the College or the Chief Executive.
- 5.1.3. The Contractor shall take responsibility for preserving the integrity of the College data and preventing the misuse, corruption or loss of the College data.
- 5.1.4. The Contractor must submit data required by the College on a timely basis, which meets funding body requirements.
- 5.1.5. The Contractor must supply sufficient evidence for the College to assess the performance of the Contractor against OFSTED's common inspection framework.
- 5.1.6. The Contractor is required to complete a self-assessment report (SAR) when requested by the College. This must be completed on the template supplied by the College unless otherwise agreed in advance in writing. The SAR must be completed in full and submitted to the College by 1st

September for the previous academic year.

- 5.1.7. The Contractor shall ensure that any system, on which the Contractor holds any the College data, including back-up data, is a secure system that complies with the security plan.
- 5.1.8. Any Breach by the Contractor of this clause 5.1(*the College data*) shall be a Breach for the purposes of clause 8.2 (*termination on Default*) and shall entitle the College (at its absolute discretion) to exercise its rights under the corresponding provisions of clause 8.2 (*termination on Default*).

5.2. General Data Protection Regulations

- 5.2.1. For the purposes of clause 5.2 (*General Data Protection Regulations*), the terms "**data controller**", "**data processor**", "**data subject**", "**personal data**", "**process**" and "**processing**" shall have the meanings prescribed under the GDPR.
- 5.2.2. The Contractor shall (and shall procure that its entire Staff) comply with any notification requirements under the GDPR and both parties will duly observe all of their obligations under the GDPR which arise in connection with the contract.
- 5.2.3. Notwithstanding the general obligation in Clause 5.2.2, the Contractor shall:
- (a) comply with all applicable laws;
 - (b) process the personal data only to the extent, and in such manner as is necessary for the provision of the Contractor's obligations under the contract;
 - (c) implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, misuse, destruction, damage, alteration or disclosure. these measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the personal data and having regard to the nature of the personal data which is to be protected;
 - (d) take reasonable steps to ensure the reliability of all Staff who may have access to the personal data and use all reasonable endeavors to ensure that persons have sufficient skills and training in the handling of personal data;
 - (e) ensure that all Staff required to access the personal data are informed of the confidential nature of the personal data and comply with the obligations out in this clause 5.2 (*General Data Protection Regulations*);
 - (f) ensure that none of the Staff publish, disclose or divulge any of the personal data to any third parties unless directed in writing to do so by the College or the Chief Executive;
 - (g) not disclose the personal data to any third parties in any circumstances other than with the written consent of the College or in compliance with a legal obligation imposed upon the College;
 - (h) notify the College within two (2) working days if it receives:
 - i. a request from a data subject to have access to that person's personal data; or
 - ii. a complaint or request relating to the College's obligations under the GDPR
 - (i) provide the College with full cooperation and assistance in relation to any complaint or request made, including by:
 - i. providing the College with full details of the complaint or request;
 - ii. complying with a data access request within the relevant timescales set out in the GDPR and in accordance with the College's instructions;

- iii. providing the College with any personal data it holds in relation to a data subject (within the timescales required by the College);
 - (j) Permit the College or the College's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data to enable the College to verify and/or procure that the Contractor is in full compliance with its obligations under the contract.
- 5.2.4. The Contractor shall comply at all times with the GDPR and shall not perform its obligations under the Contract in such a way as to cause The College or the Chief Executive to breach any of its applicable obligations under the GDPR.
- 5.2.5. The Contractor shall indemnify and keep indemnified the College in full from and against all claims, proceedings, actions, damages, losses, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill howsoever arising out of, in respect of or in connection with, any Breach by the Contractor of this Clause 5.2 (*General Data Protection Regulations*).
- 5.2.6. The provisions of this clause 5.2 (*General Data Protection Regulations*) shall apply during the contract period and indefinitely after its expiry.

5.3. Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

- 5.3.1. The Contractor shall comply with and shall ensure that its Staff complies with, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) section 182 of the Finance Act 1989.
- 5.3.2. In the event that the Contractor or its Staff fail to comply with this clause 5.3 (official secrets acts 1911 to 1989, section 182 of the finance act 1989), the College reserves the , right to terminate the contract with immediate effect and without liability by giving notice in writing to the Contractor.

5.4. Confidential Information

- 5.4.1. Except to the extent set out in this Clause 5.4 (*confidential Information*) or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:
- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - (b) not disclose the other Party's Confidential information to any other person without the owner's prior written consent.
- 5.4.2. Clause 5.4.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 5.5 (*freedom of information*);
 - (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a Breach of the contract; or

- (e) it is independently developed without access to the other party's confidential information.
- 5.4.3. The Contractor may only disclose the College's Confidential Information to its Staff who are directly involved in the provision of the services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 5.4.4. The Contractor shall not, and shall procure that its Staff do not, use any of the College's Confidential Information received otherwise than for the purposes of the contract.
- 5.4.5. Nothing in the contract shall prevent the College from disclosing the Contractor's Confidential Information:
- (a) to the Chief Executive or any Crown Body or any other contracting Chief Executive. All Crown Bodies or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any contracting Chief Executive;
 - (b) for the purpose of the examination and certification of the College's accounts; and/or
 - (c) for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Chief Executive has used its resources.
- 5.4.6. The College shall use all reasonable endeavors to ensure that the Chief Executive and any government department, contracting Chief Executive, employee, third party or sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause 5.4.5 is made aware of the College's obligations of confidentiality.
- 5.4.7. Nothing in this Clause 5.4 (*Confidential Information*) shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's confidential Information or an infringement of Intellectual Property Rights.
- 5.4.8. The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the contract is not confidential information. The College shall be responsible for determining in its absolute discretion whether any of the content of the contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 5.4.9. Without prejudice to clause 5.4.8, the College may consult with the Contractor to inform its decision regarding any exemptions, but the College shall have the final decision in its absolute discretion.

5.5. Freedom of information

- 5.5.1. The College shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this contract or any other agreement whether the Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

- 5.5.2. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the College or the Chief Executive.
- 5.5.3. The Contractor acknowledges that all information is retained for disclosure and shall permit the College to inspect such records as requested from time to time.
- 5.5.4. The Contractor acknowledges that the Commercially Sensitive Information is of indicative value only and that the Chief Executive may be obliged to disclose it in accordance with clause 5.5.1.

5.6. Publicity, Visits, Media and Official Enquiries

- 5.6.1. The Contractor shall not:
 - (a) make any press announcements or publicise the Contract or its contents in any way; or
 - (b) use The College's or the Chief Executive's name or brand in any promotion or marketing or announcement of orders, without Approval, (*which shall not be unreasonably withheld or delayed*). The Contractor shall take reasonable steps to ensure that its servants, employees, agents, suppliers, professional advisors and consultants comply with this clause 5.6 (publicity, visits, media and official enquiries).
- 5.6.2. The College shall be entitled to publicise the contract in accordance with any legal or contractual obligation upon the College, including any examination of the contract by the Chief Executive, the Auditor or otherwise.
- 5.6.3. The Contractor shall pay the utmost regard to the standing and reputation of the College and the Chief Executive and shall not do anything (by act or omission) which may:
 - (a) damage the reputation of the College or the Chief Executive;
 - (b) bring the College or the Chief Executive into disrepute;
 - (c) attract adverse publicity to the College or the Chief Executive; or
 - (d) harm the confidence of the public in the College or the Chief Executive.
- 5.6.4. The Contractor shall at all times deliver the services with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.
- 5.6.5. Each Party shall give the other advance notice of proposed visits to sites controlled by the other Party. In the case of "unannounced" visits up to 12 hours' notice will be given.

5.7. European Social Fund and Other Funding

- 5.7.1. The Chief Executive reserves the right to use payments as match funding for European social fund co-financing projects.
- 5.7.2. The Chief Executive and the College reserve the right to request information from the Contractor, in the form specified, in order to meet European funding requirements.
- 5.7.3. The Contractor shall inform learners or others that the provision delivered has been financed in whole or part by the European social fund.

- 5.7.4. General eligibility for European social fund participants is set out in the ESF operational programme for England and supporting guidance from the European social fund division of the department for works and pensions which can be found at <http://www.dwp.gov.uk/fesf>. Contractors must ensure that learners must meet the eligibility criteria defined in the operational programme as well as criteria set out in the funding rules and awarding body requirements.
- 5.7.5. The Contractor must comply with the request to display the 2007/13 European social fund logos and emblems on any materials relating to funding by the ESF.
- 5.7.6. If the use of the logo in a document or other form of communication for promotional purposes is not practicable, the following wording should be included: this programme is part funded by the European Union through the European Social Fund.
- 5.7.7. The Contractor must ensure that all learners are aware of the support of the European social fund in respect of the provision being delivered under this contract.
- 5.7.8. Without prejudice to any of the other rights under this contract to recover funds, the College on behalf of the Chief Executive will be entitled to recover from the Contractor any sums that they are required to repay to the European social fund as a result of the Contractors failure to comply with any of the clauses under 5.7 or 5.11.2.1

5.8. Security of Premises

- 5.8.1. The Contractor shall be responsible for maintaining the security of its Premises in accordance with its standard security requirements.
- 5.8.2. The Contractor shall provide the College upon request copies of its written security procedures and shall afford the College upon request an opportunity to inspect its physical security arrangements.

5.9. Malicious Software

- 5.9.1. the Contractor shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of malicious software in the ICT environment (or as otherwise agreed by the parties).
- 5.9.2. Notwithstanding clause 5.9.1, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the College data, assist each other to mitigate any losses and to restore the services to their desired operating efficiency.
- 5.9.3. Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 5.9.2 shall be borne by the parties as follows:
 - (a) by the Contractor where the Malicious Software originates from the Contractor Software, or the College data (whilst the College data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not

- quarantined or otherwise identified by the College when provided to the Contractor; and
- (b) By the College if the Malicious Software originates from the College software (in respect of which the College has waived its obligation set out in clause 5.9.1) or the College data (whilst the College data was under the control of the College).

5.10. Intellectual Property Rights

- 5.10.1. Save as granted elsewhere under the contract, neither the College nor the Contractor shall acquire any right, title or interest in the other's pre-existing IPR.
- 5.10.2. The Contractor shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the contract) without Approval, use or disclose any the College Pre-Existing IPR or the project specific IPR to any third party.
- 5.10.3. clause 5.10 shall take effect on the date of the contract and future rights that will take effect immediately on the coming into existence of the relevant project specific PRS, as appropriate.
- 5.10.4. The Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to the College under the contract.
- 5.10.5. The College hereby grants to the Contractor a non-exclusive, revocable, non-assignable license to use the College pre-existing PR and the project specific PRS during the contract period, for the sole purpose of enabling the Contractor to provide the services. In the event that the Contractor wishes to use the project specific PRS during the contract period for a purpose other than for the sole purpose of enabling the Contractor to provide the services, the Contractor shall not do so without Approval. In making a request pursuant to this clause 5.10.5, the Contractor shall provide the College with such information about the proposed use as the College may request. In electing to grant Approval pursuant to this clause 5.10.5, the College may (at its sole discretion) grant to the Contractor a non-exclusive, revocable, non-assignable license to use the project specific PRS during the Contract Period.
- 5.10.6. Prior to using any third-party Intellectual Property Rights, the Contractor shall obtain the Approval of the College. The Contractor shall provide the College details of any third party license required by the Contractor or the College in order for the Contractor to carry out its obligations under the contract using the third party Intellectual Property Rights. The College reserves the right to withhold Approval in the event that it does not agree to the terms of the third party license or where any additional charges will be incurred.
- 5.10.7. where the Contractor is granted Approval by the College to use the third party rights, the Contractor shall procure that the owner of third party rights grants to the College a license upon the terms informed to the College when seeking the Approval.
- 5.10.8. the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the College, the Chief Executive and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the College, the Chief Executive or the Crown may suffer or incur as a result of any claim that the performance by the Contractor of the services and/or the possession or use by the College or the Chief Executive of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("Claim") except where the claim arises from:

- (a) items or materials upon design supplied by the College; or
- (b) the use of data supplied by the College which is not required to be verified by the Contractor under any provision of the contract.

5.10.9. The College shall notify the Contractor in writing of the claim and the College shall not make any admissions which may be prejudicial to the defence or settlement of the claim. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with the claim provided always that the Contractor:

- (a) shall consult the College on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the College; and
- (c) shall not settle or compromise the claim without Approval (not to be unreasonably withheld or delayed).

5.10.10. if a claim is made in connection with the contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall immediately notify the College and, at its own expense and subject to the consent of the College (not to be unreasonably withheld or delayed), use its best endeavours to:

- (a) modify the relevant part of the services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or Deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or Deliverables or to the substitute services or Deliverables; or
- (b) procure a licence to use and supply the services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the College, and in the event that the Contractor is unable to comply with clause 5.10 (a) or clause 5.10. (b) within 10 working days of receipt of the Contractor's notification the College may terminate the contract with immediate effect and without liability by notice in writing and the Contractor shall, upon demand, refund the College with all monies paid in respect of the services or deliverable that is subject to the claim.

5.10.11. in the event that a modification or substitution in accordance with clause 5.10 (a) is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with clause 5.10.1o (b) the College shall be entitled to delete the relevant service from the contract.

5.10.12. This clause 5.10 (Intellectual Property Rights) sets out the entire financial liability of the Contractor with regard to the infringement of any intellectual property right as a result of the provision of the services or the provision of the Deliverables hereunder. this shall not affect the Contractor's financial liability for other Defaults or causes of action that may arise hereunder.

5.11. Records and Audit Access

5.11.1. subject to clause 5.11.2, the Contractor shall at all times keep and maintain until six years after the end of the Contract Period (or such other period as specified by the College), full and accurate records and accounts of the operation of the contract including the services provided under it and the amounts paid by the College and such other items as the College may reasonably require from time to time.

5.11.2. The Contractor shall keep the records and accounts referred to in this clause 5.11 (records and audit access) in accordance with best accountancy practice.

- 5.11.3. Without prejudice to clause 5.11.1, where the Chief Executive is funding the delivery of the contract using ESF monies (or in its role as a co-financing organisation is using the contract as a match for ESF provision), the Contractor shall maintain the records and accounts referred to in this clause 5.11 (records and audit access) until at least 31 December 2022. Any changes to this date will be notified in writing by the Chief Executive.
- 5.11.4. At the end of the learner's programme of study the Contractor must provide the College all original documentation requested relating to the learners programme.
- 5.11.5. If the learners documented evidence for their programme of study is held in an e-portfolio system, learner access must not be withheld at any stage, including termination of this contract.
- 5.11.6. The Contractor shall provide (or procure provision of) access at all reasonable times to the College's or the Chief Executive's internal auditors or other duly authorised Staff or agents to inspect such records and accounts as the College or the Chief Executive may require from time to time (which may for the avoidance of doubt include emails sent to and from Staff). The College and the Chief Executive shall be entitled to interview the Staff in order to obtain appropriate oral explanations of the records and accounts and the Contractor shall provide (or procure provision of) access to the relevant Staff at such times as may be reasonably required to enable the College and/or the Chief Executive to do so.
- 5.11.7. Duly authorised Staff or agents of the College shall have the right to visit sites controlled by the Contractor and to be given free access to the Staff and to learners during the hours when the Contractor is delivering the services with a view to verifying that the Contractor is delivering the services in accordance with the contract.
- 5.11.8. The College shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the services, save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Chief Executive and the Auditor is outside of the control of the College.
- 5.11.9. The Contractor shall provide the rights set out in this clause 5.11(records and audit access) to any duly authorised Staff or agents of the College, the Chief Executive, the national audit office, the European court of auditors, the European commission and any third parties as notified by the College to the Contractor from time to time.
- 5.11.10. The Contractor will allow the Chief Executive, his Staff and any other person nominated by him access to its Premises and all documentation related to the delivery of provision funded by the Chief Executive.
- 5.11.11. Without prejudice to the foregoing, in the event of an investigation into fraudulent activity or other impropriety by the Contractor or any third party in relation to performance of the services, the College reserves for itself, the Chief Executive and any statutory auditors of the Chief Executive and their respective authorised agents or any government department the right of immediate access to all records and accounts referred to in this clause 5.11 (records and audit access) and the Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the Contract Period or at any time thereafter.
- 5.11.12. The Contractor shall indemnify and keep indemnified the College in full from and against all claims, proceedings, actions, damages, losses, costs and expenses and all loss of profits, business revenue or goodwill howsoever arising out of, in respect of or in connection with, any Breach by

the Contractor of this clause 5.11 (*records and audit access*).

5.11.13. Without prejudice to clause 5.11.11 the parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 5.11 (*records and audit access*).

6. CONTROL OF THE CONTRACT

6.1. Transfer and Sub-Contracting

6.1.1. The Contractor shall not assign, sub-contract or in any other way dispose of the contract without prior consent of the college.

6.1.2. Second level contracting by the Contractor is forbidden under the terms of this contract. For avoidance of doubt

- (a) a Contractor buying a resource from a third party to deliver a full framework would be considered as second level sub-contracting
- (b) the Contractor buying a resource such as using the services of a self-employed tutor for specialist element delivery does not constitute second level contracting.

6.1.3. the College may itself provide or may employ and pay a third-party supplier to provide the services or any part of the services without the need for the consent of the Contractor:

- (a) if a Force Majeure event prevents the Contractor from providing part or all of the services in accordance with the contract in any material respect for more than one month; or
- (b) if the Contractor fails (or the College reasonably believes that the Contractor is about to fail) to perform the services in accordance with the contract or to meet the Minimum Performance Levels of the Minimum Service Levels.

6.1.4. The College may disclose to any transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the contract. In such circumstances the College shall authorise the transferee to use such confidential information only for purposes relating to the performance of the Contractor's obligations under the contract and for no other purposes and shall take all reasonable steps to ensure that the transferee gives a confidentiality undertaking in relation to such confidential information.

6.2. Waiver

6.2.1. The failure of either party to insist upon strict performance of any provision of the contract, or the failure of either party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the contract.

6.2.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with clause 1.6 (*notices*).

6.2.3. A waiver of any right or remedy arising from a Breach of the contract shall not constitute a waiver of any right or remedy arising from any other or subsequent Breach of the contract.

6.3. Contract Amendment Procedure

- 6.3.1. The College has the right to propose variations to the contract (including a request by the College for the Contractor to cease any part of the services) in accordance with this clause 6.3 ("*Contract Amendment procedure*"). Where the College proposes to vary any part of the contract the College shall serve a Contract Amendment notice on the Contractor, and the Contractor shall promptly comply with such Contract Amendment procedure as detailed in this clause 6.3 ("*Contract Amendment procedure*").
- 6.3.2. Without prejudice to the generality of the College's right to vary the contract, such variations may include the following:
- (a) cessation of any part of the services, subject to clause 8.5.4;
 - (b) additions to any part of the services;
 - (c) change of the Chief Executive's business or policies imposed by Her Majesty's Government;
 - (d) quality of the services; and/or
 - (e) change or addition to any funding guidance, the Staff vetting procedures or any other guidance and/or codes of practice issued by the College or the Chief Executive.
- 6.3.3. The College and the Contractor shall meet to discuss any issues arising from the contract amendment notice. For the avoidance of doubt, any discussions held between the College and the Contractor pursuant to this clause 6.3 shall be without prejudice and subject to contract.
- 6.3.4. As soon as practicable after any part of the Contract Amendment notice has been discussed in accordance with clause 6.3.3 above the College shall confirm in writing that it wishes:
- (a) the Contractor to proceed with the Contract Amendment issued (or that part of it which has been agreed or determined as above); or
 - (b) to withdraw the Contract Amendment notice (or the relevant part).
- 6.3.5. If the College confirms that it wishes to proceed with the Contract Amendment a copy of the notice detailing the amendment will be signed by both parties and, the contract shall be deemed to have been amended accordingly.
- 6.3.6. The Contractor shall comply with any proposed variation to the contract. If the Contractor fails to implement or successfully comply with the variation by the required date, the College may:
- (a) give the Contractor a further opportunity to implement or comply with the variation; or
 - (b) apply the dispute resolution procedure set out in clause 9.2 (dispute resolution).
- 6.3.7. If the College has not confirmed that it wishes to proceed with the Contract Amendment notice within 30 calendar days of the date of the discussion in clause 6.3.5 above or has not withdrawn the contract amendment notice within 30 calendar days of the date of the discussion in clause 6.3.5 above then the Contract Amendment notice (or the relevant part) shall be deemed to have been withdrawn.
- 6.3.8. The College shall not be liable for any costs incurred by the Contractor in implementing the procedures pursuant to this clause 6.3 ("*Contract Amendment procedure*"). Save that the College shall be liable for any reasonable, proportionate and proven costs incurred by the Contractor in implementing the procedures pursuant to this clause 6.3 ("*Contract Amendment Procedure*") where the College withdraws the Contract Amendment notice in accordance with clause 6.3.4.

The College reserves the right to access all records to validate a claim under this clause 6.3.8.

- 6.3.9. Without prejudice to any of the other rights of the Contractor, the Contractor may propose variations to the contract which shall be referred to the College for consideration. Such variations shall be detailed in a Contract Amendment notice between the College and the Contractor and the contract may be varied in accordance with the Contract Amendment procedure as detailed in this clause 6.3 ("Contract Amendment Procedure").

6.4. Severability

- 6.4.1. If any provision or part of a provision of the contract is held invalid, illegal or unenforceable for any reason, such provision or part of a provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the contract had been executed with the invalid, illegal or unenforceable provision or part of a provision eliminated.
- 6.4.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the contract, the College and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

6.5. Remedies in the Event of Inadequate Performance

- 6.5.1. without prejudice to clause 2.4 (customer complaints), where a complaint is received about the standard of services or about the manner in which any services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the contract, then the College and the Contractor shall take all reasonable steps to investigate the complaint. Following such investigation, the College finds (acting reasonably) that such complaint is valid and justified, the College may, in its sole discretion, uphold the complaint., or take further action in accordance with clause 8.2 (termination on Default) of the contract.
- 6.5.2. In the event that the College is of the reasonable opinion that there has been a Breach of the contract by the Contractor, then the College may, without prejudice to its rights under clause 8.2 (termination on Default), do any of the following:
- (a) without terminating the contract, itself supply or procure the supply of all or part of the services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the College that the Contractor will once more be able to supply all or such part of the services in accordance with the contract;
 - (b) without terminating the whole of the contract, terminate the contract in respect of part of the services only (whereupon a corresponding reduction in the payments shall be made) and thereafter itself supply or procure a third party to supply such part of the services;
 - (c) terminate, in accordance with clause 8.2 (termination on Default), the whole of the contract; and/or
 - (d) charge the Contractor for and the Contractor shall pay any costs reasonably incurred by the College (including any reasonable administration costs) in respect of the supply of any part of the. services by the College or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the services and provided that the College uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement services.

- 6.5.3. subject always to clause 2.5 (Minimum Performance Levels and Minimum Service Levels) and clause 2.6 (Performance Improvement Process), if the Contractor fails to supply any of the services in accordance with the provisions of the contract and such failure is capable of remedy, then the College shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within five working days of the College's instructions or such other period of time as the College may direct.
- 6.5.4. in the event that the Contractor:
- (a) fails to comply with clause 6.5.3 above and the failure is materially adverse to the interests of the College or prevents the College from discharging a statutory duty; or
 - (b) persistently fails to comply with clause 6.5.3 above;

the College may terminate the contract with immediate effect and without liability by giving the Contractor notice in writing.

6.6. Cumulative Remedies

Except as otherwise expressly provided by the contract, all remedies available to either party for Breach of the contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

7. LIABILITIES

7.1. Liability, Indemnity and Insurance

- 7.1.1. Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) Fraud or fraudulent misrepresentation;
 - (c) any Breach of any obligations implied by section 12 of the sale of goods act 1979 or section 2 of the supply of goods and. services act 1982;
 - (d) any claim under the indemnity in clause 5.2.5;
 - (e) any claim under the indemnity in clause 5.10.8;
 - (f) any claim under clause 5.4 (Confidential Information);
 - (g) any claim under clause 5.5 (freedom of information);
 - (h) any claim under the indemnity in clause 7.2 (taxation, national insurance and employment liability); or
- 7.1.2. Not Used
- 7.1.3. Subject always to clause 7.1.1 and clause 7.1.4, the liability of either party for Defaults whether arising from tort (including negligence), Breach of contract or otherwise under or in connection with this contract shall be subject to the following financial limit:
- (a) the annual aggregate liability under the contract of either party for all its other Defaults

shall in no event exceed £250,000 (Two hundred and fifty thousand pounds).

7.1.4. Subject to clause 7.1.1 and clause 7.1.5, in no event shall either party be liable to the other for:

- (a) any indirect or consequential loss or damage; or
- (b) any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

7.1.5. The College may, amongst other things, recover as a direct loss:

- (a) any additional operational and/or administrative expenses arising from the Contractor's Default (including, without limitation, any costs and expenses incurred by the College arising out of, or in connection with, the loss, misuse or corruption of any the College data);
- (b) any loss, liability, expenditure, service credit, liquidated damages or any other sums that the College incurs or is required to pay under the College contract as a result of the Contractor's Default;
- (c) any wasted expenditure or charges rendered unnecessary and/or incurred by the College arising from the Contractor's Default; and
- (d) the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the contract as a result of a Default by the Contractor.

7.1.6. Nothing in the contract shall impose any liability on the College in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the College to the Contractor that may arise by virtue of either a Breach of the contract or by negligence on the part of the College, or the College's employees, servants or agents.

7.1.7. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of the following risks:

Professional indemnity insurance:	£250,000
Public and products liability insurance:	£2,000,000
Employer's liability insurance:	£10,000,000

and such insurance shall be reviewed on an annual basis and maintained for the duration of the Contract Period and for a minimum of six years following the expiration or earlier termination of the contract.

7.1.8. The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

7.1.9. The Contractor shall give the College, on request, copies of all insurance policies referred to in this clause. 7.1 (liability, indemnity and insurance) or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 7.1.10. If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the contract the College may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 7.1.11. the provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the contract. Subject always to clause 7.1.7, it shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability under the contract.

7.2. Taxation, National Insurance and Employment Liability

The parties acknowledge and agree that the contract constitutes a contract for the provision of services and not a contract of employment. The Contractor shall at all times indemnify the College and the Chief Executive and keep the College and the Chief Executive indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the College or the Chief Executive is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or customs as an employer of the Staff whether during the contract period or arising from termination or expiry of the contract.

7.3. Warranties and Representations

7.3.1. the Contractor warrants and represents that

- (a) it has full capacity and authority and all necessary consents to enter into and perform its obligations under the contract;
- (b) the contract is executed by a duly authorised representative of the Contractor;
- (c) in entering the contract, it has not committed any Fraud;
- (d) as at the commencement date, all information, statements and representations provided by the Contractor to the College prior to and in relation to or anticipation of the contract (and all related clarifications) are true, accurate and not misleading save as may have been specifically disclosed in writing to the College prior to execution of the contract and it will advise the College of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the contract;
- (f) all Contractor Software, and third-party software will:
 - i. be currently supported versions of that software; and
 - ii. perform in all material respects in accordance with its specification;
- (g) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the contract;
- (h) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver; administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (i) it owns, has obtained or is able to obtain, valid licenses for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (j) the Services (and The College's and/or the Chief Executive's permitted use thereof) shall not infringe any third party's Intellectual Property Rights;

- (k) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (l) in the three years prior to the date of the Contract (or, if the Contractor has been in existence for less than three years, in the whole of such shorter period) it has:
 - i. conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - ii. been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (m) as far as the Contractor is aware, having made due enquiry, it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfill its obligations under the contract.

7.3.2. For the avoidance of doubt, the fact that any provision within the contract is expressed as a warranty shall not preclude any right of termination the College may have in respect of Breach of that provision by the Contractor.

8. DEFAULT, DISRUPTION AND TERMINATION

8.1. Termination on insolvency and change of control

8.1.1. The College may terminate the contract with immediate effect and without liability by giving notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within part of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) 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);
- (c) a petition is presented for its winding up (which is not dismissed within 7 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;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) 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;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule all of the Insolvency Act 1986; or
- (h) any event similar to those listed in Clause 8.1.1(a) to Clause 8.1.1(g) occurs under the Law of any other jurisdiction.

8.1.2. The College may terminate the Contract with immediate effect and without liability by notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or

- assignment for the benefit of, the Contractor's creditors;
- (b) a petition is presented and not dismissed within 7 days or order made for the Contractor's bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the insolvency Act 1986;
- (e) a creditor or encumbrance attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 7 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- (g) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

8.1.3. Where the Sub-Contractor goes into administration or liquidation the Chief Executive of Skills Funding Agency must be assumed to be a creditor of the Sub-Contractor. The Sub-Contractor must take steps to ensure that the Chief Executive of Skills Funding is provided with details of the administrator or liquidator and receives notifications of any creditors meetings. The Chief Executive will confirm whether in fact he is a creditor within eight weeks of being notified that the Sub-Contractor is in administration or liquidation.

8.1.4. The Contractor shall notify The College immediately if the Contractor undergoes a change of control within the meaning of Section 1124 of the Corporation Tax Act 2010 ("Change of Control"). The College may terminate the Contract by notice in writing with immediate effect and without liability within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that The College becomes aware of the Change of Control; but shall not be permitted to terminate where an Approval (such Approval not be unreasonably withheld or delayed, subject always to The College's right to conduct reasonable and proportionate due diligence in respect of the new entity and The College being fully satisfied of the financial standing of such entity was granted prior to the Change of Control.

8.2. Termination on Default

8.2.1. The College may terminate the Contract by giving written notice to the Contractor with immediate effect and without liability if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of The College within 10 Working Days, or such other longer period as may be specified by The College, after issue of a written notice specifying the Default and requesting it to be remedied;
- (b) the Default is not, in the reasonable opinion of The College, capable of remedy; or
- (c) the Default is a Breach of the Contract.

8.2.2. In the event that through any Default of the Contractor, data transmitted or processed in connection with the contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the College in respect of any charge levied for its transmission and reconstitution and any other costs charged in connection with such Default.

- 8.2.3. If the College fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the College in writing of such failure to pay. If the College fails to pay such undisputed sums within 90 working days of the date of such written notice, the Contractor may terminate the contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the College exercising its rights under clause 3.2 (*recovery of sums due*).

8.3. Breaks

Either party shall have the right to terminate the contract at any time by giving the other at least 12 months written notice.

8.4. Prime contracts

The College may terminate the contract by giving written notice to the Contractor with immediate effect if the College's contract with the Funding Agency is terminated for any reason whatsoever.

8.5. Consequences of expiry or termination

- 8.5.1. Where the College terminates the contract under clause 8.2 (termination on Default) and then makes other arrangements for the supply of services, the College may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the College throughout the remainder of the contract period. The College shall take all reasonable steps to mitigate such additional expenditure. Where the contract is terminated under clause 8.2 (termination on Default), no further payments shall be payable by the College to the Contractor until the College has established the final cost of making those other arrangements.
- 8.5.2. Where the Contractor terminates the contract without adhering to the notice period under clause 8.3 (break), the College may recover from the Contractor the cost reasonably incurred of making other arrangements for the supply of services and any additional expenditure incurred by the College throughout the remainder of the Contract Period. The College shall take all reasonable steps to mitigate such additional expenditure.
- 8.5.3. The College's obligation to mitigate the losses referred to in clause 8.5.2 shall include an obligation to take all reasonable steps to minimise such losses by:
- (a) The appropriation of assets, employees and resources used in connection with the service for other purposes. If such assets, employees and resources can be used for other purposes then there shall be an equitable reduction in the Breakage Costs and unrecovered costs; and
 - (b) in relation to contracts entered into with third parties, termination by the Contractor of those contracts at the earliest possible date without Breach or where contractually permitted and, where required by the College, assigning such contracts to the College or a third party acting on behalf of the College.
- 8.5.4. Save as otherwise expressly provided in the contract, but only to the extent the College is first compensated in full by the Chief Executive in relation to any sum payable by it to the Contractor:
- (a) termination or expiry of the contract shall be without prejudice to any rights, remedies or obligations accrued under the contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry;
 - (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of The College or the Contractor under Clause 3.1 (*Fees and Payment*), Clause 3.2 (*Recovery*

of Sums Due), Clause 4.1 (Prevention of Corruption), Clause 5.1 (The College Data), Clause 5:2 (Data Protection Act), Clause 5.3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), Clause 5.4 (Confidential Information), Clause 5.5 (Freedom of Information), Clause 5.7 (European Social Fund and Other Funds), Clause 5.10 (Intellectual Property Rights), Clause 5.11 (Records and Audit Access), Clause 6.6 (Cumulative Remedies), Clause 7.1(Liability, Indemnity and Insurance), Clause 8.5 (Consequences of Expiry or Termination), Clause 8.7 (Recovery and Obligations upon Termination) and Clause 9.1 (Governing Law and Jurisdiction);

- 8.5.5. For the avoidance of doubt, the Chief Executive shall have no liability whatsoever in respect of, or in connection with, any such material non-payment or late payment by the College to the Contractor.

8.6. Disruption

- 8.6.1. The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of The College, their respective employees or any other Contractor employed by The College.
- 8.6.2. The Contractor shall immediately inform The College of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 8.6.3. In the event of industrial action by the Staff, the Contractor shall seek The College's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 8.6.4. If the Contractor's proposals referred to in Clause 8.6.3 are considered insufficient or unacceptable by The College acting reasonably then the Contract may be terminated with immediate effect and without liability by The College by notice in writing.
- 8.6.5. If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of The College, an appropriate allowance by way of extension of time will be Approved by The College. In addition, The College will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

8.7. Recovery and Obligations upon Termination

- 8.7.1. On the expiry or termination of the Contract for any reason (or in advance if stated as such), the Contractor shall:
- (a) if requested by The College, immediately return to The College all Confidential Information and original documentation which applies to the contracted provision which was obtained or produced in the course of providing the Services.
 - (b) without prejudice to clause 8.7.1(a), if requested by the College, transfer to the College (or such other person as the College may direct) all learners' records and review paperwork where ownership of such records is not vested in the College, the Contractor shall transfer; or procure the transfer of, all rights, title and interest in and to such records to the College (or such other person as the College may direct) at no cost to the College (or the third person as the case may be);
 - (c) assist and co-operate with the College to ensure an orderly transition of the

provision of the services to the Replacement Contractor and/or the completion of any work in progress;

- (d) if requested by the College, use all reasonable endeavours to procure the transfer of any licences, or the granting of an appropriate licence or sub-licence, to the College, the Chief Executive or the replacement of any third party intellectual property rights that are necessary for the continued performance of the services following termination or expiry of the contract. where the owner of the third party Intellectual Property Rights requires payment in consideration for transferring or granting such licence or sub-licence (the "transfer fee") the Contractor shall first notify the College. If the College informs the Contractor that the transfer/granting of a licence should proceed, the College shall (unless the end of the contract period arises due to the Contractor's Default) be responsible for paying the transfer fee. for the avoidance of doubt, the College shall have no liability for any transfer fee that the Contractor has incurred without obtaining Approval;

8.7.2. if the Contractor fails to comply with clause 8.7.1(a) to clause 8.7.1.(d), the College may recover possession thereof and the Contractor grants a licence to the College or its appointed agents to enter (for the purposes of such recovery) any Premises of the Contractor.

8.7.3. Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 8.7.1(c).

8.7.4. At the end of the Contract Period (howsoever arising) the licence granted pursuant to clause 5.10.6 shall automatically terminate without the need to serve notice.

8.8. Business Continuity

8.8.1. Without prejudice to the general obligations in clause 8.6 (disruption), the Contractor shall, at all times, ensure that it has appropriate business continuity arrangements in place for the delivery of the services.

8.8.2. the Contractor shall undertake regular risk assessments in relation to the provision of the services and all contingency arrangements at least annually and shall provide the results of, and any recommendations in relation to, those risk assessments to the College promptly in writing following each review.

8.9. Force Majeure

8.9.1. Neither party shall be liable to the other party for any delay in performing, or failure to perform, its obligations under the contract (*other than a payment of it\money*) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations under the contract for the duration of such Force Majeure. However, if such Force Majeure prevents either party from performing its material obligations under the contract for a period in excess of six months, either party may terminate the contract with immediate effect and without liability by notice in writing.

8.9.2. Any failure or delay by the Contractor in performing its obligations under the contract which results from any failure or delay by an agent, sub-Contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-Contractor or supplier is itself impeded by force majeure from complying with an obligation to the Contractor.

- 8.9.3. If either party becomes aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay on its part as described in clause 8.9.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

9. Disputes and Law

9.1. Governing Law and Jurisdiction

The contract shall be governed by and interpreted in accordance with the Law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

9.2. Dispute Resolution

- 9.2.1. The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the contract within 10 working days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Principal / CEO (or equivalent) of each party.
- 9.2.2. Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 9.2.3. if the dispute cannot be resolved by the parties pursuant to clause 9.2.1 the parties shall refer it to mediation pursuant to the procedure set out in clause 9.2.6 unless:
- (a) The College considers that the dispute is not suitable for resolution by mediation; or
 - (b) The Contractor does not agree to mediation.
- 9.2.4. If the College considers that the dispute is not suitable for resolution by mediation or the Contractor does not agree to mediation pursuant of clause 9.2.3, the dispute may be referred to the courts.
- 9.2.5. the obligations of the parties under the contract shall not cease or be suspended or delayed by the reference of a dispute to mediation and the Contractor and the Staff shall comply fully with the requirements of the contract at all times.
- 9.2.6. The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the "mediator") shall be chosen by agreement between the parties or, if they are unable to agree upon a mediator within five working days after a request by one party to the other or if the mediator agreed upon is - unable or unwilling to act, either party shall within five working days from the date of the proposal to appoint a mediator or within five working days of notice to either party that he is unable or unwilling to act, apply to the centre for effective dispute resolution to appoint a Mediator;
 - (b) The Parties shall within five Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held if considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to

- provide guidance on a suitable procedure;
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non - binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

The following Appendices outline the operating procedures, programme details and service level agreement for this Contract.

Appendix 1: Operating procedures

The purpose of the agreement is for the Contractor to deliver training leading to qualifications fundable under the ESFA 16-18 and/or 19+ funding provisions.

The responsibilities for delivery of the programme are set out in the Service Level Agreement (Appendix 3)

1. Key Tasks

- To engage and recruit learners eligible for Education Skills Funding Agency funding;
- Provide initial advice and guidance to learners including advice on ESF match funding;
- To accurately complete health and safety checks, eligibility and start paperwork;
- To provide eligibility checks, initial assessment of learners and develop and agree Individual Learning Plans with learners;
- To collect the learner contribution fee if applicable in full;
- To register learners with the relevant Awarding Body;
- To complete all enrolment paperwork required under classroom earning funding regulations and the College requirements;
- To carry out and document monitoring and progress reviews to comply with the college's quality procedures;
- To deliver, assess, internally verify and arrange external verification of agreed qualifications in line with awarding body standards;
- To undertake final assessment and administration of accreditation and certification of learners in conjunction with the relevant awarding body;
- Provide documented exit interviews with learners and data on progression routes;
- To provide timely progress and completion information to the College;
- To make files available for audit purposes as and when requested;
- To complete a Self-Assessment report on provision delivered under the terms of this contract in line with the Ofsted Education Inspection Framework and submit this to the College for review in a timely manner;
- The responsibilities of the tasks required can be found in Appendix 3 -Service Level Agreement.

2. Reporting Requirements

The Contractor will submit learner documentation required for funding purposes to the College and in particular ensure that all enrolment forms are submitted by the end of October and all achievement certificates and submitted by the end of September. All completed documentation if not delivered in person should be sent by recorded delivery to the College for the attention of:

Subcontractor Administration
Kensington and Chelsea College, Wornington Road
London W10 5QQ

3. Invoicing procedure

The invoicing procedure for the programme is as follows:

Activity	When
The Contractor notifies the College of starts, learner/achievers and leavers/non achievers by the 25th of each month. Any notifications after the 25th of each Month will be processed in the following month	25th of each month
The College uploads ILR for all activity in that month	4 th working day of the month
The College downloads Provider Funding report	5 th working day of the month
The College reconciles data and funding, together with any fees collected on the Contractor's behalf	8 th working day of the month
The College will then send by email confirmation to the provider the amount of funding and fees to be invoiced or credit note raised along with a PFR extract and any applicable MIS reports	11 th working day of the month
The Contractor raises an invoice and produces signed evidence of the learners 'in training' on a termly basis	14 th working day of the month
The College will pay invoice on receipt of the funding from the Funding Agency	Latest First week of the next month (only if invoices are received by the 14 th working day)

All invoices should be marked for the attention of:

Finance Department
Kensington and Chelsea College
Hortensia Road
London
SW10 0QS

Note: Any file names non-compliant at time of audit which carry a financial penalty or clawback will be subject to financial penalty or claw back being deducted or claimed back from the provider.

4. Specialist Provisions relating to GDPR

4.1. Interpretation

In this agreement:

“Data Protection Laws” means the GDPR and the Privacy and Electronic Communication Regulations 2003, any amendment, consolidation or re-enactment thereof, any legislation of equivalent purpose or effect enacted in the United Kingdom, or, where relevant, the European Union, and any orders, guidelines and instructions issued under any of the above by relevant national authorities, a judicial authority in England and Wales or, where relevant, a European Union judicial authority;

“GDPR” means the General Data Protection Regulation (EU) 2016/679 as in force from time to time;
“Personal Data” has the meaning given to it by the GDPR, but shall only include personal data to the extent that such personal data, or any part of such personal data, is processed in relation to the services provided under this agreement; and

“Replacement National Legislation” means legislation in the United Kingdom, which is enacted to cover, in whole or part, the same subject matter as the GDPR.

- 4.2. Words and phrases with defined meanings in the GDPR have the same meanings when used in this Agreement.
- 4.3. If the GDPR ceases to apply to the United Kingdom, references to the GDPR, to provisions within it and to words and phrases with defined meanings in it, shall be deemed references to Replacement National Legislation, the nearest equivalent provisions in it and the nearest equivalent words and phrases in it (as the case may be).
- 4.4. For the avoidance of doubt, compliance with this Agreement shall not relieve the Supplier of any of its direct obligations under the GDPR.

5. Details of Processing

5.1. The following details apply to the processing being carried out under this agreement:

- (a) The Personal Data will be processed for the provision of Services as set out in the agreement.
- (b) The Personal Data will be processed in line with KCC’s standard retention policy. The specific processing activities will be:
- (c) Data will be processed for the administration of enrolments and for submission to government agencies.
- (d) Data may also be processed for marketing purposes, if the data subject has consented for us to do so.

5.2. The Personal Data processed concerns the following categories of data subjects:

- (a) Student data and enrolment data.
- (b) The Personal Data processed concerns the following categories of data:
 - Course information
 - SENSITIVE DATA CATEGORIES (Name, Date of Birth, Address, National Insurance Number, Gender, Disabilities, Learning Difficulties, Criminal Conviction (if applicable), attendance data.

5.3. The following sub-processors will have access to the Personal Data:

- Government agencies including ESFA.

6. Obligations

6.1. Each party shall comply with the Data Protection Laws applicable to it in connection with this agreement and shall not cause the other party to breach any of its obligations under Data Protection Laws.

6.2. Where a party, or a sub-contractor of a party, processes Personal Data (that party being the **"Processor"**) on behalf of the other party or a member of its group (that party being the

"Controller") in connection with this agreement, the Processor shall, or shall ensure that its sub-contractor shall:

- 6.2.1. process the Personal Data only on behalf of the Controller, only for the purposes of performing its obligations under this agreement, and only in accordance with instructions contained in this agreement or instructions received in writing from the Controller from time to time. The Processor shall notify the Controller if, in its opinion, any instruction given by the Controller breaches Data Protection Laws or other applicable law;
- 6.2.2. not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the data subject itself), unless directed to do so in writing by the Controller;
- 6.2.3. document all processing in accordance with Article 30 of the GDPR;
- 6.2.4. only grant access to the Personal Data to persons who need to have access to it for the purposes of performing this agreement and, to the extent such persons are granted access, that they are only granted access to the part or parts of the Personal Data necessary for carrying out their role in performance of this agreement;
- 6.2.5. ensure that all persons with access to the Personal Data are:
 - (a) reliable, trustworthy and suitably trained on Data Protection Laws and as a result are aware of the Processor's duties as a processor and their personal obligations with regards to this agreement and Data Protection Laws;
 - (b) subject to an obligation of confidentiality or are under an appropriate statutory obligation of confidentiality; and
 - (c) notified of the confidential nature of the Personal Data;
- 6.2.6. as a minimum, take all measures required pursuant to Article 32 of the GDPR in accordance with best practice and provide a written description of, and rationale for, each of the technical and organisational measures implemented, or to be implemented, to:
 - (a) protect the Personal Data against unauthorised or unlawful processing and accidental loss, destruction, damage, alteration or disclosure; and
 - (b) detect and report Personal Data breaches within good time;
- 6.2.7. not engage another processor (a "**Sub-Processor**") to process the Personal Data on its behalf without specific written consent of the Controller, approving a named Sub-Processor, such consent always subject to:
 - (a) the Processor binding any Sub-Processor by written agreement, imposing on the Sub-Processor obligations in relation to the Personal Data equivalent to those set out in this agreement, and a right to procure that the Sub-Processor ceases processing without delay on termination of this agreement; and
 - (b) the Processor remaining liable to the Controller for the acts and omissions of any Sub-Processor, as if they were the acts and omissions of the Processor;

- 6.2.8. notify the Controller within five business days if it receives any communication from a third party relating directly or indirectly to the processing of the Personal Data, including but not limited to requests to exercise rights under Data Protection Laws, complaints or general correspondence and shall provide the Controller with a copy of any such communication. The Processor shall not take action in relation to such communication, unless compelled by law, without the Controller's prior approval, and shall comply with any instructions the Controller gives in relation to such communication;
- 6.2.9. taking into account the nature of the processing and so far as is possible, assist the Controller with the fulfilment of the Controller's obligation to respond to requests for exercising data subject's rights under the Data Protection Laws and in responding to any other request, complaint or communication by, but not limited to, providing information requested by the Controller and relevant Personal Data within a reasonable time and in a commonly used electronic format, taking into account the timescales for the Controller complying with the data subject's request under Data Protection Laws;
- 6.2.10. taking into account the nature of the processing and the information available to the Processor, assist the Controller in ensuring compliance with its obligations pursuant to Articles 32 to 36 of the GDPR inclusive. Such assistance shall include, but shall not be limited to:
- (a) notifying the Controller immediately upon discovering a Personal Data breach, providing all information it has, or reasonably should have, in relation to the Personal Data breach, so that the Controller is able to satisfy its obligations under Articles 33 and 34 of the GDPR and is able to properly investigate the Personal Data breach;
 - (b) assisting in the risk assessment of the processing of the Personal Data which the Processor carries out under this agreement in order that the Controller is able to complete a data protection impact assessment in compliance with Article 35 of the GDPR, and consult with a relevant supervisory authority if necessary in compliance with Article 36 of the GDPR, including providing information about the Processor's current technical and organisational measures, and what further measures it could put in place to mitigate any risks to the rights and freedoms of data subjects, and the risks of Personal Data breach in relation to the Personal Data, as identified by it or the Controller;
- 6.2.11. at the Controller's option, delete or return to the Controller the Personal Data, and procure that any party to whom the Processor has disclosed the Personal Data does the same:
- (a) when the Controller instructs the Processor to do so, in which case the Processor shall be excused from its obligations under this agreement to the extent that such action prevents it from complying with those obligations; or
 - (b) after the termination of Services under this agreement which involve processing the Personal Data,

such obligation to include deleting or returning all copies of the Personal Data, unless applicable law requires the Processor to retain the Personal Data. Where the Controller requests the return of Personal Data, the Processor shall

use all reasonable endeavours to ensure it is in the format and on the media specified by the Controller;

- 6.2.12. comply with any instructions of the Controller to modify the Personal Data, or restrict its processing, and procure that any party to whom the Processor has disclosed the Personal Data does the same;
- 6.2.13. where reasonably possible, store the Personal Data in a structured, commonly used and machine-readable format;
- 6.2.14. not transfer Personal Data outside of the European Economic Area without the prior written consent of the Controller. Where the Controller consents to the transfer of Personal Data outside the European Economic Area, the Processor shall comply with:
 - (a) the obligations of a controller under Articles 44 to 50 of the GDPR inclusive by providing an adequate level of protection to any Personal Data transferred; and
 - (b) any reasonable instructions of the Controller in relation to such transfer;
- 6.2.15. have a data protection officer where required by the GDPR, and where a data protection officer is not required, have a named individual that is responsible and available to deal with data protection issues as and when they arise in conjunction with the Controller;
- 6.2.16. make available to the Controller all information necessary to demonstrate compliance with this agreement insofar as it relates to data protection; and allow the Controller, or its external advisers (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Processor's data processing activities and those of its relevant agents, group companies and sub-contractors, and comply with all reasonable requests or directions by the Controller, to enable to Controller to verify and procure that the Processor is in full compliance with its obligations under this agreement insofar as it relates to data protection.

6.3. Notwithstanding anything in this agreement, information provided by a Processor to a Controller, whether through audit or otherwise, may be disclosed by the Controller if requested or required generally or specifically by applicable law, a court of competent jurisdiction, a supervisory authority, a certification body (as referred to by Article 43 of the GDPR) or a monitoring body (as referred to by Article 41 of the GDPR) for the purposes of responding to a claim, request for information, inquiry or investigation.

4. Funding

The funding value of the learners to be funded under the terms of this agreement is as follows:

The provider is expected to be aware of the funding changes from the Funding Agency throughout the year. The College will pay the agreed proportion of funding to the provider based on any funding changes applied.

The Maximum Contract Value (MCV) covered under the terms of this agreement is:

		Total Contract Value
Combined Funding and Fees		
Management fee (the College)		
Delivery fee (the Contractor)		

5. Management Fee

The Service Level Agreement, Appendix 3, states the agreed terms for delivery of the programmes. A management fee of [] has been retained by The College with regard to the provision of services as detailed within Appendix 4

6. Contract Monitoring

A representative from Academy Transformation Trust (FE) will provide the Vice-Principal, Students (or representative) with a fortnightly basis update on student progress and any issues that would prevent [company] from maximizing their achievement rate.

The contract payments will be agreed by email each month and reviewed at twice-termly meetings with the college.

7. Quality

The Contractor is required to maintain evidence of the following documentation which supports learners enrolled under this contract. The College holds five quality reviews throughout the academic year and evidence will be requested from the list below

7.1. Required from Provider:

• An Approval letter showing accreditation period and programme number
• Meeting local needs
• interview arrangements
• Induction details and materials
• Course handbook
• Registration details of learners
• Learner support details

• Learner action plan/learner agreements
• Learners reviews
• Programme timetable
• Learner Files and Action Plans
• Course team details, including training and CPD records
• Assessment and IV schedule
• Schemes of Work / delivery Diagram
• Assignment briefs
• Verification records
• Standardisation records
• Quality Assurance and External Verification and follow up documentation if appropriate
• Observation grade profile and report
• Health and Safety Reports and Risk Assessments
• Team meeting documentation - agenda/minutes
• Planning and review meeting documentation - agenda/minutes
• Tracking & achievement documentation
• Copies of awarding body certification/ accreditation forms for each learner.
• Results of learner satisfaction surveys
• Retention and achievement records
• Learner progression records
• Self-assessment data and reports

7.2. Policies & Procedures

• Equal Opportunities
• Health and Safety
• Quality Assurance policy
• Learner appeals
• Learner discipline
• Plagiarism/malpractice (learner)
• Staff malpractice/code of conduct
• Assessment
• Internal verification
• Complaints procedure
• Safeguarding
• Observation of Teaching and learning

7.3. Other Evidence Required

• Staff handbook
• Quality handbook
• Student handbook
• Prospectus (print or online)
• Organisation chart showing management and departmental responsibilities
• Accessibility arrangements for learners

SERVICE LEVEL AGREEMENT

Between

Morley College

And

{ }

The College Service Level Agreement with the Contractor

1. Pre-Engagement

The College will:

- a) Conduct a thorough due diligence process
- b) Provide and agree learner paperwork and funding materials to be used by the Contractor
- c) Provide a contract stating the number of learners, type of provision and levels of learning
- d) Provide guidance on learner eligibility

The Contractor will:

- a) Provide prospective learners with initial advice and guidance to ensure that the intended programme of study meets their needs
- b) Ensure the programme is valid
- c) Facilitate the recruitment process
- d) Monitor the recruitment process
- e) Check the learner's eligibility for the course

2. Enrolment

The College will:

- a) Provide and/or agree learner paperwork to be used by the Contractor
- b) Conduct 100% audit on all enrolment paperwork
- c) Conduct a face-to-face/telephone meeting to ensure the existence of learners to confirm eligibility of a 50% sample is needed before any learners are uploaded to the College ILR)

The Contractor will:

- a) Ensure that all enrolment forms and supporting evidence are provided within 4 weeks of learners' enrolment.
- b) Produce evidence that the learner has been assessed and confirmed based on the learner eligibility guidance
- c) Ensure evidence is taken of the learner's level of prior attainment and that this is correctly recorded on the enrolment paperwork
- d) Ensure the learners have the required qualifications for their level of learning. Where students do not have UK qualifications the Contractor will use a recognised assessment for English and maths and, in addition, identify any Additional Learning Needs
- e) Provide evidence to support that the learner is enrolled on an appropriate programme

3. Induction

The College will:

- a) Provide and/or agree learner paperwork to be used by the Contractor

The Contractor will:

- a) Provide learner with an induction to their programme
- b) Explain the importance of Health and Safety in the workplace
- c) Produce, with support from the College if appropriate, an additional support plan for learners with identified needs as set out in the funding guidance
- d) Explain relevant policies including Equality and Diversity, Safeguarding etc.
- e) Provide basic information about the role that they will be undertaking
- f) Provide each learner with a course tutor.
- g) Support learner in the completion of any induction paperwork.
- h) Explain to the learner the importance of their Individual Learning Plan (ILP) and provide them with an ILP
- i) Explain the programme and roles of the Contractor and The College, and provide every student with the College student brochure
- j) Explain how the qualifications are delivered and achieved
- k) Explain to the learner their rights and responsibilities, and the procedures for grievances
- l) Explain code of conduct, disciplinary procedures and expected standard of behaviour etc.
- m) Provide the learner with written information to support what they have been given during induction, to which they can refer to in future
- n) Check that the learner has understood the Information, which they have been given at induction

4. Planning and designing Individual Learning Plans (ILP)

The College will:

- a) Agree learner paperwork to be used by the Contractor and, where appropriate, provide access to the College's electronic reporting systems and
- b) Where appropriate, provide details of systems where ILPs can be updated and stored electronically
- c) Conduct a sample quality audit to ensure ILPs are completed according to funding requirements

The Contractor will:

- a) Identify and meet the learner's individual specific training and development needs and facilitate.
- b) Produce an individual learning plan to reflect the above needs setting out learner objectives
- c) Assess the learner's current skills, knowledge and qualifications via a variety of methods
- d) Ensure ILPs are updated at every review
- e) Quality check ILPs as required for auditing purposes
- f) Provide the College with access to any e-portfolio system used for learners under this contract and enable spot check auditing of progress to be carried out.

5. Delivering Training Programmes

The College will:

- a) Check that any actions from the EV are actioned in a timely manner
- b) Undertake regular checks and audits on the progress of learners and providers records
- c) Conduct joint lesson observation with Contractors to ensure standardisation of this process
- d) Provide, where appropriate, the learner with a network account and access to 'Moodle'

The Contractor will:

- a) Ensure high quality training programmes are delivered according to awarding body specifications
- b) Ensure all learners are registered with the awarding body in a timely manner
- c) Ensure the qualifications are valid for the duration of the learners programme
- d) Provide the College with a 6-weekly progress report for all learners
- e) Provide additional support and guidance for any learners who are falling behind on their progress
- f) Ensure all teachers have an annual lesson observation. Any teacher who demonstrates performance which falls below the standards agreed with the College must be mentored and re-observed during the same academic year
- g) Ensure actions are identified from IV process and lesson observations and actioned in a timely manner
- h) Ensure External Verifiers are arranged in a timely manner to make sure learners are signed off programmes by their planned end dates
- i) Provide the College with External Verifier reports and carry out any actions in a timely manner
- j) Ensure qualifications are claimed in a timely manner and certified copies of the qualification certificate must be sent to The College within 2 months of the date of achievement
- k) The Contractor must operate a withdrawal and follow up policy and procedure. The following evidence must be produced in the event of a learner withdrawing. Clear written evidence of the last date of structured learning, written notice of termination of the programme and the reason for leaving documented
- l) Ensure that no aspect of the training contracted by The College may be further sub contracted out by the Contractor

6. Reviewing Learners' Progress

The College will:

- a) Provide, where appropriate, access to the College's electronic reporting systems, and agree learner paperwork to be used by the Contractor.

The Contractor will:

- a) Organise a schedule of regular review meetings with the learner (at least every 6-weeks, shorter if required)
- b) Involve the learner in the review
- c) Find out and record the progress made by the learner
- d) Identify additional training and support needs and amend the training plan accordingly
- e) Agree and record actions and targets between this and the next review
- f) Provide the College with evidence of the learner's progression
- g) Advise the College of any concerns which may be had regarding the learner's progress
- h) Carry out quality audits on the learner's reviews
- i) Complete all associated paperwork promptly

7. Ensuring Equality of Opportunity and Safeguarding within the training process

The College will:

- a) Carry out due diligence to ensure that the Contractor embeds equality of opportunity in all aspects of the training process
- b) Provide sample policies and procedures if required

The Contractor will:

- a) Provide the College with a copy of their Equal Opportunity and Safeguarding policies
- b) Provide training in equal opportunities and safeguarding to Staff and learners
- c) Make sure that learner knows what to do if they feel they are being unfairly treated in the workplace
- d) Act on any complaints received from learner or department, maintain a complaints file and bring any complaints to the attention of The College
- e) Assist in identifying needs of individual learners with disabilities and liaise with departments accordingly
- f) Ensure that learners are treated fairly and equally and that learners are not bullied, harassed or made to feel unwelcome during their studies
- g) Ensure learners understand what to do if they have a complaint about the way they are treated
- h) Make reasonable adjustment to meet the individual needs of learners with disabilities
- i) Monitor the achievement of various 'at risk' groups to ensure that there are no achievement gaps

8. Health and Safety

The College will:

- a) Carry out due diligence to ensure that the Contractor complies with Health and Safety requirements in all aspects of the training process
- b) Provide sample policies and procedures if required

The Contractor will:

- a) Using competent Staff verify that all training environments provide a healthy safe and supportive learning environment
- b) Carry out annual checks to ensure a safe and healthy working environment is provided to learners at all times during off the job training
- c) Monitor health and safety practices on an ongoing basis
- d) Provide health and safety training for learner to raise their awareness of risk
- e) Check learners' understanding of health and safety risk awareness
- f) investigate any accidents involving learner within the department and agree preventative action
- g) inform the learners about who is responsible within the provider and any premises used for teaching in relation to health and safety matters
- h) provide initial and ongoing relevant health and safety information, instruction and training in

the workplace for learner (record instruction and training)

- i) report any accidents concerning learners immediately to the College
- j) assess the risks to which learners are exposed during their studies and apply the general principles of prevention
- k) Introduce and maintain appropriate measures to eliminate or control risks to the lowest reasonable practicable level and ensure a competent person always appropriately supervises learners

9. Maintaining Standards

The College will:

- a) Communicate monthly with the Contractor to ensure all learners are on track to achieve their qualification in a timely manner
- b) Provide a half-termly Quality Improvement Review meeting, at an agreed venue, to ensure that actions are being progressed
- c) Conduct a sample audit of required documentation
- d) Invite Contractor's representatives to Standardisation and moderation events at The College where programmes are delivered by both parties

The Contractor will:

- a) Produce an annual Self-Assessment Report which includes all evidence required by The College and a Quality Improvement Plan
- b) Ensure all programmes are delivered according to awarding body and funding regulations
- c) Take part in discussions with inspectors during inspection as required
- d) Allow inspectors to take part in discussions with learners during the inspection process

10. Fees

The College has identified the following costs associated with the services that are set out within Appendix 3, Sections 1-9 inclusive for which it will retain the following amounts from the MCV.

We agree to the terms set out in this contract

Authorised to sign for and behalf of the Contractor:

Signature:	
Name (Block Capitals):	
Position in Organisation	
Company Name and Address	
Date:	
Official Business Stamp	

Authorised to sign for and behalf of the College:

Signature:	
Name (Block Capitals):	
Position in Organisation	Principal & Chief Executive
Company Name and Address	
Date:	
Official Business Stamp	