



Education & Skills
Funding Agency

**2017 to 2018
Contract for Services**

between

**(i) the Secretary of State for Education (acting
through the Education and Skills Funding
Agency)**

and

(ii) [Contractor's Name]

Contents

General Terms and Conditions

1	Purpose of the Contract
2	Definitions and Interpretation
3	Commencement and Continuation
4	The CONTRACTOR's Obligations
5	Payment
6	Quality Assurance
7	Intellectual Property Rights
8	Liability
9	Insurance
10	Freedom of Information and Confidentiality
11	Consent to Publication
12	Data Protection and Protection of Personal Data including Student Learner Information
13	Student Health and Safety and Safeguarding
14	Access and Monitoring
15	Prohibited Activities
16	Fraud and Irregularity
17	European Funding and Other Sources of Funding
18	Breach
19	Termination
20	Transfer of Responsibility on Expiry or Termination
21	Assignment and Sub-Contracting
22	Force Majeure
23	Public Reputations of the Parties/Press Releases
24	Status of Contract
25	Waiver
26	Severance
27	Third Party Rights
28	Notice
29	Governing/Jurisdiction

30	Dispute Resolution
31	Entire Contract / Amendments
Schedule 1	Service Specification
Schedule 2	Finance, Volume and Data Capture
Schedule 3	Special Conditions
Schedule 4	Additional Conditions of Funding, (if applicable)

This Contract is made on the 1 August 2017 between:

CONTRACTOR NAME
ADDRESS 1
ADDRESS 2
ADDRESS 3
ADDRESS 4
POSTCODE

SECRETARY OF STATE FOR
EDUCATION
ACTING THROUGH THE EDUCATION
AND SKILLS FUNDING AGENCY
CHEYLESMORE HOUSE
QUINTON ROAD
COVENTRY
CV1 2WT

Hereinafter called
THE CONTRACTOR

Hereinafter called
THE EDUCATION AND SKILLS FUNDING
AGENCY
(THE ESFA)

GENERAL TERMS AND CONDITIONS

1 Purpose of the Contract

1. THE ESFA has agreed to purchase, and THE CONTRACTOR has agreed to supply, services on and subject to the terms and conditions of this Contract. The services subject to the terms and conditions of this Contract are in respect of the delivery of education provision for:
 - a. students aged 16 to 18, and
 - b. high needs students aged 16 to 18, or any young person aged 19 to 25 subject to an Education Health and Care Plan, who requires additional support costing over £6,000 (i.e. additional to education and support that is funded through the published 16-19 standard funding formula) and for whom the relevant local authority provides top-up funding (Element 3).

2 Definitions and interpretation

2.1 For the purposes of this Contract:

2.1.1 "**Background IPR**" means all Intellectual Property Rights (IPR), documents, information and materials of THE CONTRACTOR or THE CONTRACTOR Related Parties used in connection with and/or relating to the provision of the Services, including computer programs, data, reports and specifications which existed prior to the Contract Award Date or which is developed during the term of the Contract, but outside the terms of the Contract;

2.1.2 "**Child**" means a person under the age of 18;

- 2.1.3 "**Commencement Date**" means 1 August 2017;
- 2.1.4 "**Confidential Information**" means all confidential information of a party, including its business, finances, services, products or affairs, operations, processes, plans or intentions, product information, know-how, software, designs, trade secrets, market opportunities, the terms and conditions of this Contract and any other information of commercial value, whether disclosed in writing or verbally or by any other means (and which is either expressly stated to be confidential or which is by its nature implicitly confidential);
- 2.1.5 "**Contract**" means this document including all schedules and appendices, and any other documents expressly incorporated by reference in this document. Where this Contract, or any part of therein, has been awarded following an open and competitive tender, any related tender documentation including, but not limited to the Pre-Qualification Questionnaire, Invitation To Tender Questionnaire, Commercial Schedule and Data Security Plan, shall be incorporated within the terms of the Contract;
- 2.1.6 "**Contract Award Date**" means 1 August 2017;
- 2.1.7 "**Contractor Related Part(y)(ies)**" means any employee, officer, consultant, agent or any other person whatsoever acting for or on behalf of THE CONTRACTOR or otherwise under THE CONTRACTOR'S control and direction (including but not limited to sub-contractors);
- 2.1.8 "**Crown**" means Queen Elizabeth II and any successor;
- 2.1.9 "**Crown Body**" means any department, office or agency of the Crown, including Ofsted, the Care Quality Commission, the Charity Commission, any and all Local Authority and Combined Authority bodies;
- 2.1.10 "**Deliverables**" means all reports, documents, works, products, databases, materials and other deliverables brought into existence, created or acquired by THE CONTRACTOR in whole or in part using funding provided under this Contract and/or as a result of the provision of the Services including, but not limited to, Assets and Confidential Information;
- 2.1.11 "**the Department**" means the Department for Education which incorporates its Executive Agency, THE ESFA;
- 2.1.12 "**Developed IP**" means any and all Intellectual Property Rights created by or on behalf of THE CONTRACTOR or any of the Contractor Related Parties as a result of or in the course of and in connection with the provision of the Services or the operation of this Contract;
- 2.1.13 "**Eligible Expenditure**" means expenditure solely for the purpose of delivering the Services set out and agreed in the Appendices and Annexes of this Contract.

- 2.1.14 **“THE ESFA” or “ESFA”** means the Education and Skills Funding Agency, an Executive Agency of the Department for Education;
- 2.1.15 **“Exempt Information”** means any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Contract or otherwise relating to THE CONTRACTOR, which potentially falls within an exemption to FOIA (as set out therein);
- 2.1.16 **“FOIA”** means the Freedom of Information Act 2000 and all regulations made there under from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in this Contract;
- 2.1.17 **“FOIA notice”** means a decision notice, enforcement notice and/or an information notice;
- 2.1.18 **“High Needs Student”** means a student aged 16 to 18, or any young person aged 19 to 25 subject to an Education Health and Care Plan, who requires additional support costing over £6,000 (i.e. additional to education and support that is funded through the published 16-19 standard funding formula) and for whom the relevant local authority provides top-up funding (Element 3)
- 2.1.19 **“the Information Authority”** means the Information authority administered by the Secretary of State for Business, Innovation and Skills;
- 2.1.20 **“Intellectual Property Rights” or “IPR”** means all intellectual property rights including all patents, trademarks, service marks, registered designs, utility models, design rights, database rights, rights to inventions, copyright and related rights, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, rights in Confidential Information (including know-how and trade secrets) and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including the right to apply for and all applications for any of the foregoing rights, the right to claim priority, the right to sue for past infringements and common law or equitable remedies in respect of any of the foregoing rights, and any renewals, extensions or restorations, and divisional, continuation and reissued applications of the foregoing rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;
- 2.1.21 **“Inspectorates”** means one, any or all of the inspectorates: Office for Standards in Education, Children’s Services and Skills (Ofsted), Her Majesty’s Inspectorate for Education and Training in Wales (Estyn) and the Care Quality Commission (CQC);

- 2.1.22 “**Ofsted**” means the Office for Standards in Education, Children’s Services and Skills;
- 2.1.23”**Minor Breach**” means a delay or non-performance by either Party of its obligations, in part or in full, under the Contract which does not materially, adversely or substantially affect the performance or delivery of the Services, in part or in full, or the provision of a safe, healthy and supportive learning environment;
- 2.1.24 “**Parties**” means THE ESFA, on behalf of the Secretary of State, and THE CONTRACTOR;
- 2.1.25 “**Premises**” means the location/s where the Services are to be performed, as detailed in the Contract;
- 2.1.26 **SECRETARY OF STATE**” means the SECRETARY OF STATE for Education;
- 2.1.27 “**Serious Breach**” means any breach which adversely, materially and substantially affects the performance or delivery of the Services, in part or in full, or the provision of a safe, healthy and supportive learning environment and includes a breach of security that adversely affects the personal data or privacy of an individual. Serious Breach shall include but not limited to a failure to comply with legislation, or actions or omissions by THE CONTRACTOR that endanger the health or safety of Students.
- 2.1.28 “**Services**” means the services to be supplied by THE CONTRACTOR as set out in the Service Specification, and THE CONTRACTOR's obligations under this Contract. The Services may include the production of one or more Works;
- 2.1.29 “**Service Specification**” means the service specification set out in Schedule 1 and any Annexes contained within this Contract;
- 2.1.30 “**Student**” means any persons to whom THE CONTRACTOR is required to deliver any of the Services.
- 2.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.
- 2.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors and permitted assigns].
- 2.4 The schedules and appendices form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the schedules and appendices.
- 2.5 Words in the singular shall include the plural and vice versa.

- 2.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 2.7 A reference to **writing** or **written** includes faxes but not e-mail.
- 2.8 Where the words **include(s)**, **including** or **in particular** are used in this Contract, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 2.9 Any obligation in this Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done.
- 2.10 References to clauses, appendices and schedules are to the clauses, appendices and schedules of this Contract.

3 Commencement and Continuation

- 3.1 THE CONTRACTOR shall provide the Services to THE ESFA on the terms and conditions of this Contract.
- 3.2 The Contract shall commence on 1 August 2017 and shall finish on 31 July 2018 unless this Contract is terminated in accordance with Clause 19.

4 THE CONTRACTOR'S Obligations

- 4.1 THE CONTRACTOR shall deliver the Services and shall allocate sufficient resources to the Services to enable it to comply with all obligations set out in this Contract.
- 4.2 THE CONTRACTOR agrees to comply with the conditions of this Contract together with:
- a. the Funding Guidance;
<https://www.gov.uk/16-to-19-education-funding-guidance>
 - b. the post-16 audit code of practice: <https://www.gov.uk/government/publications/post-16-audit-code-of-practice>
 - c. the Minimum Standards- <https://www.gov.uk/government/publications/interim-ks5-minimum-standards>
 - d. Specification of the Individualised Learner Record for 2017 to 2018
<https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2017-to-2018>
 - e. Individualised Learner Record - Provider Support Manual;
<https://www.gov.uk/government/publications/ilr-guides-and-templates-for-2017-to-2018>

f. *Rigour and Responsiveness in Skills* (April 2013, DfE/BIS publication);
<https://www.gov.uk/government/publications/rigour-and-responsiveness-in-skills>

g. Traineeships:

<https://www.gov.uk/delivering-traineeships-through-efa-funding>

h. Sub-contracting

<https://www.gov.uk/government/publications/funding-guidance-for-young-people-sub-contracting-controls>

i. Further Education Free Meals

<https://www.gov.uk/guidance/16-to-19-education-financial-support-for-students>

j. Guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions;

<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

k. Special educational needs and disability code of practice: 0 to 25 years;

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

and, where appropriate

l. National Minimum Standards for Residential Accommodation for children in Colleges (published under section 87C of the Children Act 1989).

These policies were correct at the Commencement Date, but may be updated from time to time.

- 4.3 THE CONTRACTOR will perform and will ensure that THE CONTRACTOR Related Parties perform the Services with reasonable skill, care and diligence in accordance with the Contract.

5 Payment

- 5.1 In consideration of the provision of the Services by THE CONTRACTOR, THE ESFA shall pay to THE CONTRACTOR the charges set out in the schedules and annexes of this contract.
- 5.2 All payments by THE ESFA will be made via BACS, unless otherwise notified, and will be made on the 20th of each month or the prior working day.
- 5.3 Payment by THE ESFA shall be without prejudice to any claims or rights, which THE SECRETARY OF STATE may have against THE CONTRACTOR and shall not constitute any admission by THE SECRETARY OF STATE as to the performance by THE CONTRACTOR of its obligations hereunder. Prior to any such payment, THE SECRETARY OF STATE shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against THE CONTRACTOR, arising from this Contract or any other contract between THE CONTRACTOR and THE SECRETARY OF STATE.

- 5.4 Where THE ESFA or any other authority acting on THE SECRETARY OF STATE's behalf in accordance with the principles set out in the post-16 audit code of practice carries out a review or audit of a sample of the evidence which THE CONTRACTOR is required to provide under the Contract to support the payments made by THE ESFA and identifies errors in that evidence which it deems are material (as defined in the Funding Guidance 2017 to 2018 <https://www.gov.uk/16-to-19-education-funding-guidance> THE SECRETARY OF STATE reserves the right to recover from THE CONTRACTOR an amount based on the error rate identified and the total value of the Contract. Such amount may be recovered by making deductions from future payments due to THE CONTRACTOR under the Contract or any other contract between the Parties. In all such reviews the decision of THE ESFA is final.

6 Quality Assurance

- 6.1 THE CONTRACTOR represents warrants and undertakes to THE ESFA that it has the necessary resources, skills and experience to carry out THE CONTRACTOR's obligations pursuant to this Contract.
- 6.2 THE CONTRACTOR shall comply and shall ensure that the Contractor Related Parties comply with this Contract and all applicable Laws and the most recent policies which may from time to time be issued by the Department, THE ESFA, Ofsted and/or other relevant inspectorates and awarding bodies of which THE CONTRACTOR is made aware, including but not limited to, being published on the relevant bodies website.
- 6.3 THE CONTRACTOR shall ensure that all activities carried out pursuant to this Contract shall be documented in accordance with the requirements of THE ESFA as notified to THE CONTRACTOR in writing from time to time and shall provide such documentation to THE ESFA, as THE ESFA shall request from time to time within any reasonable time period specified by THE ESFA.
- 6.4 THE CONTRACTOR shall have in place its own quality assurance arrangements that demonstrate that it can meet the terms and conditions of this Contract and evidence these arrangements if required to do so in a form and subject to any other conditions, as from time to time THE ESFA or the Department may specify.
- 6.5 If requested by THE ESFA, THE CONTRACTOR will make available to THE ESFA a report on its own assessment of the quality of the Services provided by THE CONTRACTOR under this Contract in a form and subject to any other conditions, as from time to time THE ESFA may specify.

Financial Health

- 6.6 THE ESFA will undertake a desk based assessment of financial health and control. Should THE ESFA, at its absolute discretion, consider that the outcome of any financial health and/or control assessment is inadequate, THE ESFA may, in its absolute discretion take one or more of the following actions:

- 6.6.1 require THE CONTRACTOR to, and THE CONTRACTOR shall, accept and comply with additional Contract obligations relating to the improvement of financial health and/or control arrangements;
 - 6.6.2 require THE CONTRACTOR to suspend the recruitment of Students to the Services and/or cap any growth in Student numbers;
 - 6.6.3 give consideration to what changes, if any, are required in its application of lagged learner funding when finalising the amount of funding in any subsequent Contract between the parties; and/or
 - 6.6.4 terminate in accordance with clause 19.2.1.
- 6.7 Where THE CONTRACTOR fails to comply with requirements imposed under clause 6.6.1 and/or 6.6.2, the ESFA shall consider Termination under clause 19.2.2.

Ofsted Inspection

- 6.8 When THE CONTRACTOR receives notification from OFSTED that the Services are to be inspected, THE CONTRACTOR shall, on request, provide THE ESFA with a copy of its quality, and any other relevant information in accordance with the required timescale of OFSTED. THE CONTRACTOR must notify THE ESFA of the date of the meeting at which OFSTED give feedback on the inspection and allow THE ESFA's nominated representative to attend the meeting. THE CONTRACTOR must confirm to THE ESFA in writing the outcome of the inspection within 5 working days of receiving the feedback from OFSTED.
- 6.9 Where the Services delivered under this Contract are subject to inspection by Ofsted and the inspection results in the Services in part or overall being provisionally assessed as inadequate, THE ESFA may in its absolute discretion take one or more of the following actions:
- 6.9.1 require THE CONTRACTOR to, and THE CONTRACTOR shall, accept and comply with temporary additional Contract for Service obligations, including but not limited to, requiring THE CONTRACTOR to temporarily suspend the recruitment of Students and/or temporarily cap any growth in those Learning Programmes which are assessed as inadequate;
 - 6.9.2 commence discussions with THE CONTRACTOR, either with Ofsted or not, as part of considering what actions as specified in clause 6.10.1 – 6.10.4 inclusive may be taken.
- 6.10 Where Ofsted has confirmed its assessment that the Services are inadequate in part or overall, THE ESFA may, in its absolute discretion take one or more of the following actions:
- 6.10.1 require THE CONTRACTOR to, and THE CONTRACTOR shall, accept and comply with additional Contract obligations relating to the improvement of the Services

6.10.2 require THE CONTRACTOR to suspend the recruitment of Students to the Services, and/or cap any growth in Student numbers;

6.10.3 give consideration to what changes, if any, are required in its application of lagged learner funding when finalising the amount of funding in any subsequent Contract between the parties; and/or

6.10.4 terminate in accordance with clause 19.2.3 or 19.2.5.

6.11 Where THE CONTRACTOR fails to comply with the requirements imposed under clause 6.10.1 and/or 6.10.2, THE ESFA shall consider Termination under clause 19.2.4.

Minimum Standards

6.12 The ESFA may, at any time during the Term, undertake an assessment of the quality and delivery of the Services, which may include analysis of performance against the Minimum Standards, as published by the Department - <https://www.gov.uk/government/publications/interim-ks5-minimum-standards> Where THE ESFA assesses that the Services delivered under this Contract, in whole or part, are below the minimum standards, THE ESFA may, in its absolute discretion take one or more of the following actions:

6.12.1 require THE CONTRACTOR to, and THE CONTRACTOR shall, accept and comply with additional Contract obligations relating to the improvement of the Services;

6.12.2 require THE CONTRACTOR to suspend the recruitment of Students to, and/or to cap any growth in, those Learning Programmes which are identified as below the minimum standards;

6.12.3 give consideration to the Services which are below the minimum standards in its application of lagged learner funding when finalising the amount of funding in any subsequent Contract(s) between the Parties;

6.12.4 reduce, suspend or recover payment to THE CONTRACTOR in respect of that part of the Services to which the failure to meet the minimum standards relate;

6.12.5 terminate the Contract in accordance with Clause 19.2.6.

6.13 Where THE CONTRACTOR fails to comply with requirements imposed under clause 6.12.1 and/or 6.12.2, THE ESFA will consider Termination under clause 19.2.7.

7 Intellectual Property Rights (IPR)

7.1 Any IPR owned by THE ESFA as at the Commencement Date shall continue to be owned by THE ESFA (or, where applicable, the third party from whom its right to use the IPR has derived) and any IPR owned by THE CONTRACTOR or the Contractor Related Parties as at the Contract Award Date shall continue to be

owned by THE CONTRACTOR or THE CONTRACTOR Related Parties (or, where applicable, the third party from whom its right to use the IPR has derived).

- 7.2 For the avoidance of doubt, any IPR created by THE ESFA after the Commencement Date shall be owned absolutely by THE ESFA.
- 7.3 THE CONTRACTOR hereby agrees that the Developed IP shall vest absolutely in THE ESFA immediately upon such rights coming into existence and, to that end, THE CONTRACTOR with full title guarantee hereby assigns to THE ESFA, the Developed IP and all rights, title and interest in and to the Developed IP future or contingent to which THE CONTRACTOR is now or may in the future be entitled under the laws now or in the future in force. THE CONTRACTOR shall procure assignments, in accordance with the above provisions, in favour of THE ESFA from all Contractor Related Parties in respect of all Developed IP created by such Contractor Related Parties.
- 7.4 So far as THE CONTRACTOR may lawfully do so, it unconditionally and irrevocably waives in relation to the Developed IP all existing and future moral rights conferred by Chapter IV of Part I of the Copyright, Designs and Patents Act 1988 and all author's rights of a similar kind conferred by the law of any jurisdiction and shall procure such a waiver from all Contractor Related Parties. THE CONTRACTOR shall ensure that any copyright and database right materials which comprise the Developed IP shall be marked with the following copyright notice: "Crown Copyright 20[17]. All Rights Reserved" or database right notice: "Database right of the Crown 20[17]. All Rights Reserved", as the case may be.
- 7.5 In respect of:
- 7.5.1 all IPR under this Contract which are currently or subsequently become vested in THE ESFA; and/or
- 7.5.2 the Developed IP,
- THE ESFA hereby grants to THE CONTRACTOR a non-exclusive, non-transferable licence to use and copy such IPR, to the extent necessary for, and solely for the purposes of, fulfilling its obligations under this Contract. The licence shall expire automatically upon termination or expiry of this Contract for any reason.
- 7.6 To the extent that any IPR in any Deliverables created or supplied by THE CONTRACTOR or any Contractor Related Parties under or in connection with this Contract are not already owned by THE ESFA or assigned to THE ESFA in accordance with Clause 7.3, including the Background IPR:
- 7.6.1 THE CONTRACTOR hereby grants to THE ESFA an irrevocable, non-exclusive perpetual, transferable, worldwide, royalty-free licence (with power to sub license) to use, reproduce, modify, adapt, enhance or otherwise exploit the same for any purpose; and

7.6.2 without prejudice to Clause 7.6.1, in relation to any IPR vested in any third party, THE CONTRACTOR shall procure that the relevant third party shall grant to THE ESFA the same or substantially the same licence rights as set out in Clause 7.6.1, or, in the event that this is not reasonably possible, the same rights and benefits (including, without limitation, the same IPR warranties and indemnities) as those provided to THE CONTRACTOR by the relevant third party.

7.7 THE CONTRACTOR:

7.7.1 shall ensure that it has, and shall continue to have for the duration of this Contract and for such time after the expiry or termination of this Contract as is necessary for the proper performance of its obligations under this Contract, all necessary licences, permits and consents and all necessary IPR to enter into and perform this Contract and in particular the provisions of Clause 7.6; and

7.7.2 warrants, represents and undertakes to THE ESFA that:

7.7.2.1 any IPR or, as the case may be, rights to use any IPR, provided or to be provided to THE ESFA under or pursuant to this Contract shall allow for the proper, lawful and reasonably anticipated use of such rights by THE ESFA and any other reasonably anticipated users;

7.7.2.2 THE CONTRACTOR or THE CONTRACTOR Related Party (as the case may be) shall be the sole author of the Deliverables and the sole absolute unencumbered legal and beneficial owner of all Developed IP and other rights in and to the Deliverables, excluding any third party rights in the Background IPR (if there are any);

7.7.2.3 THE CONTRACTOR or THE CONTRACTOR Related Party (as the case may be) was and shall remain throughout the provision of the Services a “qualifying person” as that expression is defined in Section 154 of the Copyright, Designs and Patents Act 1988;

7.7.2.4 the Developed IP does not infringe the rights of any third party, and no third party has threatened or, so far as THE CONTRACTOR or THE CONTRACTOR Related Party is aware, is currently threatening proceedings in respect of such infringement;

7.7.2.5 THE CONTRACTOR or THE CONTRACTOR Related Party has not granted and will not grant or purport to grant any licences, rights or assignments over or relating to the Developed IP; and

7.7.2.6 THE CONTRACTOR or THE CONTRACTOR Related Party (as the case may be) has not done nor will hereafter do or omit to do any act or thing whereby any Developed IP may be invalidated,

encumbered or otherwise prejudicially affected or the due performance of this Contract hindered or prevented, or whereby the right to apply for registrations for any Developed IP (or the conditions, requirements or circumstances affecting the validity of the grant of any such registration) may be jeopardised.

- 7.8 THE CONTRACTOR shall accurately maintain, update and provide a copy to THE ESFA (as and when THE ESFA may reasonably require but in any event on each anniversary of the Commencement Date) of a register of all IPR in all materials designed, produced, published and/or supplied by THE CONTRACTOR or THE CONTRACTOR Related Parties (in any form of media) under or pursuant to this Contract.
- 7.9 THE CONTRACTOR shall ensure that it has all rights necessary to assign the Developed IP in accordance with Clause 7.3 and that the use by THE ESFA of, or the provision by THE CONTRACTOR of, any Deliverables shall not constitute an infringement or misappropriation of any IPR of any third party.
- 7.10 If any third party claims that the assignment by THE CONTRACTOR pursuant to Clause 7.3 or the use by THE ESFA of any of the Deliverables constitutes an infringement or misappropriation of any IPR of that third party, THE CONTRACTOR shall indemnify THE ESFA in respect of any such infringement or misappropriation or allegation of such infringement or misappropriation.
- 7.11 THE CONTRACTOR covenants with THE ESFA that THE CONTRACTOR shall and shall procure that any Contractor Related Party shall, at the reasonable request and reasonable expense of THE ESFA, do all such further things and execute all such further instruments as THE ESFA may from time to time reasonably require for the purposes of further securing to THE ESFA or confirming or protecting THE ESFA's title to and right to use the Developed IP.
- 7.12 Unless otherwise agreed in advance in writing with THE ESFA, THE CONTRACTOR shall only use standard 'off-the-shelf' versions of any third party software provided that additions or variations to 'off-the-shelf' third party software shall not require THE ESFA's agreement where the IPR in such additions or variations is licensed to THE CONTRACTOR (for the purpose of making the same available to THE ESFA) as an integral part of the third party software and THE ESFA acknowledges that ownership of such software or other IPR licensed to THE CONTRACTOR by third parties to deliver the Services shall remain with the relevant third party.
- 7.13 THE CONTRACTOR shall obtain and maintain all appropriate licences to use the third party software to allow it to deliver the objectives of the Contract including the Deliverables.
- 7.14 THE ESFA hereby grants THE CONTRACTOR a non-exclusive royalty-free licence to use the marks in the Territory solely in connection with the provision and promotion of the Services in accordance with the Contract for the duration of the term of the Contract, unless this Contract is terminated earlier and subject to

compliance with the terms set out in Schedule 3, paragraph 5 and the reasonable directions of THE ESFA and provided always that the Marks are only used as part of the statements approved by THE ESFA. For the avoidance of doubt, failure to comply with the requirements of this Clause and/or Schedule 3, paragraph 5 shall constitute a Serious Breach under Clause 18 of this Contract.

8 Liability

- 8.1 THE CONTRACTOR shall indemnify and keep indemnified THE SECRETARY OF STATE, its servants, employees, and agents against all loss, damage or liability (whether civil or criminal), claims, demands, costs and expenses incurred by or made against THE SECRETARY OF STATE, its servants, employees, or agents in respect of any loss or damage or personal injury (including death) which arises out of or in the course of or caused by the negligent act or omission or wilful default of THE CONTRACTOR or THE CONTRACTOR Related Parties in the delivery of the Services except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful default of THE SECRETARY OF STATE or its servants or agents.
- 8.2 THE CONTRACTOR warrants to THE SECRETARY OF STATE that to the best of its knowledge and belief all works carried out under the Contract will not infringe, in whole or in part, any IPR of any person and agrees to indemnify THE SECRETARY OF STATE against any and all claims, demands, proceedings, expenses and losses, including any of a consequential nature, arising directly or indirectly out of any act of the foregoing in relation to any works, where such act is, or is alleged to be, an infringement of a third party's IPR. This warranty and indemnity shall survive the termination of the Contract and shall exist for the life of the IPR
- 8.3 The liability of THE CONTRACTOR under this clause shall not exceed twice the value of the Contract or £1,000,000 whichever is the greater save that this limit shall not apply to claims in respect of death or personal injury.
- 8.4 THE ESFA shall not be liable to THE CONTRACTOR for any indirect or consequential loss, damage, injury or costs whatsoever.

9 Insurance

- 9.1 THE CONTRACTOR shall maintain at its own cost a policy or policies of insurance to cover the liability of THE CONTRACTOR in respect of any actual default for which it may become liable to indemnify THE ESFA under this Contract. THE CONTRACTOR should provide copies of any insurance certificates to THE ESFA including professional indemnity, employers' liability and public liability insurance following a written request from THE ESFA.

10 Freedom of Information and Confidentiality

Freedom of Information

- 10.1 THE CONTRACTOR acknowledges and agrees that THE ESFA is subject to legal duties under FOIA, which may require THE ESFA to disclose on request information relating to this Contract or otherwise relating to THE CONTRACTOR.
- 10.2 THE CONTRACTOR acknowledges and agrees that THE ESFA is required by law to consider each and every request made under FOIA for information
- 10.3 THE CONTRACTOR acknowledges and agrees that all decisions made by THE ESFA pursuant to a request under FOIA is solely a matter for and at the discretion of THE ESFA.
- 10.4 Notwithstanding anything in this Contract to the contrary (including without limitation any obligations of confidentiality), THE ESFA shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is exempt information THE ESFA shall use reasonable endeavours (but shall not be obliged) to consult THE CONTRACTOR and shall not:
- 10.4.1 confirm or deny that information is held by THE ESFA; or
- 10.4.2 disclose information requested
- to the extent that in THE ESFA's opinion the information is eligible in the circumstances for an exemption and therefore THE ESFA may lawfully refrain from doing either of the things described in parts (a) and (b) of this clause.
- 10.5 In relation to information relating to THE CONTRACTOR or this Contract which THE CONTRACTOR requests should be exempt under the FOIA THE CONTRACTOR shall indemnify THE ESFA for any and all costs (including legal fees) incurred by THE ESFA in:
- 10.5.1 assessing the application of any exemption under FOIA; and/or
- 10.5.2 responding to any FOIA notice; and/or
- 10.5.3 lodging any appeal against a decision of the Information Commissioner's Office in relation to disclosure.
- where such costs are incurred pursuant to efforts by THE ESFA to withhold exempt information following a request from THE CONTRACTOR.
- 10.6 The Department shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the disclosure under FOIA of any exempt information or other information whether relating to this Contract or otherwise relating to THE CONTRACTOR.
- 10.7 THE CONTRACTOR shall assist THE ESFA as THE ESFA deems reasonably necessary to enable THE ESFA to comply with its obligations under FOIA.

Confidentiality

10.8 THE CONTRACTOR hereby warrants that:

10.8.1 any person employed or engaged by THE CONTRACTOR and THE CONTRACTOR Related Parties (in connection with this Contract or in the course of such/general employment or engagement) shall treat all Confidential Information belonging to THE ESFA as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Contract; and

10.8.2 any person employed or engaged by THE CONTRACTOR and THE CONTRACTOR Related Party (in connection with this Contract or in the course of such/general employment or engagement) shall not disclose any Confidential Information to any third party without prior written consent of THE ESFA, except where disclosure is otherwise expressly permitted by the provisions of this Contract.

10.9 THE CONTRACTOR shall take all necessary precautions to ensure that all Confidential Information obtained from THE ESFA or other Crown Bodies is treated as confidential and not disclosed (without prior written approval of THE ESFA) or used other than for the purposes of this Contract by any of its employees, servants, agents or sub-contractors or anyone else engaged by it generally or in connection with the Contract.

10.10 The provisions of Clause 10 shall not apply to any information which is or becomes public knowledge (other than by breach of this Clause 10). This includes information published under Clauses 10, 11 and 12:

10.10.1 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;

10.10.2 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act or the Environmental Information Regulations.

10.11 Nothing in this clause 10 shall be deemed or construed to prevent THE ESFA from disclosing any Confidential Information obtained from THE CONTRACTOR:

10.11.1 to any other Government Department, Non-Departmental or quasi Government authority or agency, central or local;

10.11.2 to any consultant, contractor or other person engaged by THE ESFA directly in connection with this Contract, provided that such information is treated as confidential by the receiving consultant, contractor or any other person.

10.12 In order to ensure that no unauthorised person gains access to any Confidential Information or data obtained and/or processed in the course of the delivery of the

Services, THE CONTRACTOR undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice in addition to those set out in Clause 12 and information provided in completion of the Data Security Questionnaire as part of the contract tendering process.

- 10.13 THE CONTRACTOR will notify THE ESFA, without undue delay, of any breach of security in relation to Confidential Information and/or data obtained and/or processed in the course of the delivery of the Services. The CONTRACTOR shall use all reasonable endeavours to mitigate the possible adverse impacts of any such breach of security including any intrusion into individuals' privacy. THE CONTRACTOR will keep a record of such breaches a copy of which shall be provided to THE ESFA upon request. THE CONTRACTOR will use its best endeavours to recover such Confidential Information and/or data however it may be recorded. THE CONTRACTOR will co-operate with THE ESFA in any investigation that THE ESFA considers necessary to undertake as a result of any breach of security in relation to Confidential Information and/or data.
- 10.14 THE CONTRACTOR shall, at its own expense, alter any security systems at any time during the period of the Contract at THE ESFA's reasonable request if THE ESFA reasonably believes THE CONTRACTOR has failed to comply with Clause 10.
- 10.15 The provisions of this Clause 10 will apply for the duration of the Contract and after its termination.
- 10.16 THE ESFA and THE CONTRACTOR acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act (FOIA) and DPA, the content of the Contract is not Confidential Information. THE ESFA 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 and DPA.
- 10.17 THE CONTRACTOR hereby gives his consent for THE ESFA to publish THE ESFA allocation and Contract in its entirety, including from time to time agreed changes to the allocation, any payments and Contract, to the general public.
- 10.18 THE ESFA may consult with THE CONTRACTOR to inform its decision regarding any redactions but THE ESFA shall have the final decision in its absolute discretion.
- 10.19 THE CONTRACTOR shall assist and cooperate with THE ESFA to enable the Department to publish the allocation, any payments and Contract.
- 10.20 Subject to Clause 7, nothing in this Clause shall prevent any party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of any IPR.

11 Consent to Publication

- 11.1 The Government has set out the need for greater transparency of public data and its commitment to hold public bodies to account over the use of public funds
- 11.2 In compliance with the Cabinet Office's transparency agenda THE ESFA is required to publish information about any payments made to The CONTRACTOR under this Contract for Services. Published information shall specifically exclude publication of bank account number and sort code.
- 11.3 The CONTRACTOR hereby gives its consent for the Department to publish this Contract for Services in its entirety, including from time to time agreed changes to the allocation, and any payments, to the general public. The Department may consult with The CONTRACTOR to inform its decision regarding any redactions to this Contract for Services but the Department shall have the final decision in its absolute discretion.
- 11.4 The CONTRACTOR shall assist and cooperate with the Department to enable the Department to publish the allocation and any Funding paid or payable to The CONTRACTOR under this Contract for Services.
- 11.5 The Department reserves the right to share information about The CONTRACTOR's performance with any other Crown Body.
- 11.6 THE ESFA may disclose any information, including the Confidential Information of The CONTRACTOR:
- 11.6.1 on a confidential basis to any Crown Body for any proper purpose of THE ESFA or of the relevant Crown Body;
 - 11.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 11.6.3 to the extent that THE ESFA (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 11.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 11.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract for Services;
 - 11.6.5 on a confidential basis for the purpose of the exercise [any](#) of its rights under this Contract for Services or
 - 11.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract for Services, and

for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement

containing terms no less stringent than those placed on THE ESFA under this Clause 11.

12 Data Protection and Protection of Personal Data including Student Learner Information

- 12.1 The Parties shall ensure that they at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles together with any subsequent re-enactment or amendment thereof in storing and processing Personal Data, and all Personal Data acquired by either party from the other shall be returned to the disclosing party on request. Both Parties hereby acknowledge that performance of a duty imposed by the Act shall not constitute a breach of any obligation in respect of confidentiality which may be owed to the other party.
- 12.2 With respect to the Parties' rights and obligations under this Contract the Parties agree that THE ESFA is the Data Controller and THE CONTRACTOR is the Data Processor within the meaning of the Data Protection Act.
- 12.3 THE CONTRACTOR shall:
- 12.3.1 Process Personal Data only in accordance with reasonable instructions from THE ESFA (which may be specific instructions or instructions of a general nature as set out in the Contract or otherwise notified by THE ESFA to THE CONTRACTOR during the term of the Contract);
 - 12.3.2 Process the Personal Data only to the extent and in such manner as is necessary for the administration of the Contract, or as is required by Law or any Regulatory Body;
 - 12.3.3 Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, 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;
 - 12.3.4 Take reasonable steps to ensure any sub- contractors or third Parties who process data covered by this Contract are aware of the contractual obligations of this contract, and in addition, understand their obligations imposed by the Data Protection Act 1998 together with any subsequent re-enactment or amendment thereof;
 - 12.3.5 Ensure that all employees, agents and associates do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by THE ESFA;

- 12.3.6 Ensure that all Personal Data required to be sent to THE ESFA as part of this contract is sent securely in keeping with the legal obligations under the Data Protection Act 1998 and related legislation. Specifically THE ESFA require all Personal Data/sensitive Personal Data transmitted by email by THE CONTRACTOR to THE ESFA to be encrypted and password protected. In addition all personal and personal/student information transmitted by THE CONTRACTOR to THE ESFA in hard copy is to be double enveloped with the name of the intended recipient clearly marked on the inner envelope with dispatch by Special Delivery or using a secure courier service.
- 12.3.7 Notify THE ESFA within 5 working days if it receives:
- 12.3.7.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 12.3.7.2 a complaint or request relating to THE ESFA's obligations under the Data Protection Legislation;
- 12.3.8 Provide THE ESFA with full co-operation and assistance in relation to any complaint or request made, including by:
- 12.3.8.1 providing THE ESFA with full details of the complaint or request;
 - 12.3.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with THE ESFA's instructions;
 - 12.3.8.3 providing THE ESFA with any Personal Data it holds in relation to a Data Subject (within the timescales required by THE ESFA); and
 - 12.3.8.4 providing THE ESFA with any information requested by THE ESFA;
- 12.3.9 Permit THE ESFA or THE ESFA's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit THE CONTRACTOR's data processing activities (and/or those of its agents and subsidiaries) and comply with all reasonable requests or directions by THE ESFA to enable THE ESFA to verify and/ or procure that THE CONTRACTOR is in full compliance with its obligations under this Contract;
- 12.3.10 Provide a written description of the technical and organisational methods employed by THE CONTRACTOR for processing Personal Data (within the timescales required by THE ESFA); and
- 12.3.11 Not Process Personal Data outside the European Economic Area without the prior written consent of THE ESFA and, where THE ESFA consents to a transfer, to comply with:

12.3.11.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data is transferred; and

12.3.11.2 any reasonable instructions notified to it by THE ESFA.

13 Student Health and Safety and Safeguarding

- 13.1 THE CONTRACTOR shall comply with all relevant health and safety legislation and Health and Safety Executive working regulations and good practice and shall ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of Students. Failure to do so may constitute a Serious Breach of this Contract for Services.
- 13.2 THE CONTRACTOR shall make arrangements for ensuring that the Services are provided with a view to safeguarding and promoting the welfare of children receiving education or training at their institution. In doing so, the CONTRACTOR shall have regard to any guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this contract, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Contract for Services.
- 13.3 THE CONTRACTOR shall make arrangements for ensuring that the Services are provided with a view to safeguarding and promoting the welfare of High Needs Students aged 18 to 25 receiving education or training at their institution. In doing so, THE CONTRACTOR shall make those arrangements as if such Students were children and will have regard to any guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions as if it applied to those Students as if they were children. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this contract, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 13.4 In providing the Services, the CONTRACTOR must ensure it actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs and promote principles that support equality of opportunity for all.
- 13.5 In providing the Services, the CONTRACTOR must comply with the general duty on specified authorities in section 26 of the Counter-Terrorism and Security Act 2015 (the Prevent duty) and must comply with the duty on partners of a panel in section 38 of the Counter-Terrorism and Security Act 2015 (the Channel co-operation duty) as if it were a partner of a local panel as defined by Schedule 7 of the Counter-

Terrorism and Security Act 2015. Failure to do so may constitute a Serious Breach of this Contract for Services.

- 13.6 Where THE CONTRACTOR provides residential accommodation for Students, THE CONTRACTOR shall inform THE ESFA of the provision of such residential accommodation and shall comply with the requirements of the national minimum standards for residential accommodation for children in Colleges published from time to time by the Secretary of State under section 87C of the Children Act 1989 as if it were a College (as defined by section 87(10) of the Children Act 1989). Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 13.7 THE CONTRACTOR shall not employ or engage, or continue to employ or engage, any person who is subject to a prohibition order made under section 141B of the Education Act 2002 to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012) in respect of any Students under the age of 19 and High Needs Students aged 19 to 25 (as if those Students were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).
- 13.8 Before employing or engaging a person to carry out teaching work in respect of any Students under the age of 19 and High Needs Students aged 19 to 25 (as if those Students were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), THE CONTRACTOR shall take reasonable steps to ascertain whether that person is subject to a prohibition order made under section 141B of the Education Act 2002.
- 13.9 THE CONTRACTOR and/or THE CONTRACTOR Related Parties must be able to demonstrate that they have robust record-keeping procedures in respect of health, safety and safeguarding through checks on record keeping undertaken. Failure to do so will constitute a Serious Breach.
- 13.10 Where THE CONTRACTOR makes a referral to any Local Authority (including social services) in respect of serious safeguarding concerns (in respect of all Students up to the age of 18, and High Needs Student aged 18 to 25), THE CONTRACTOR shall ensure that it notifies THE ESFA that a referral has been made.
- 13.11 Where, in compliance with clause 13.5, THE CONTRACTOR makes a referral of an individual Student for the purposes of determining whether that Student should be referred to a panel for the carrying out of an assessment under section 36 of the Counter-Terrorism and Security Act 2015 of the extent to which that individual is vulnerable to being drawn into terrorism, THE CONTRACTOR shall ensure it notifies the ESFA that a referral has been made.
- 13.12 Where THE CONTRACTOR has made a referral or provided information to the Disclosure and Barring Service in compliance with any duties of THE CONTRACTOR under the Safeguarding Vulnerable Groups Act 2006, THE CONTRACTOR shall ensure that it informs THE ESFA that a referral has been made / information has been provided.

14 Access and Monitoring

- 14.1 THE ESFA shall give THE CONTRACTOR reasonable advance notice in writing of proposed visits to THE CONTRACTOR or its sub-contractors, to observe the delivery of the Services, by any person who has taken or will take no direct part in the conduct or content of the Services.
- 14.2 For audit, monitoring and evaluation purposes, THE ESFA, any person acting on behalf of the SECRETARY OF STATE, the Department, the Department for Work and Pensions, the National Audit Office, Representatives of the European Commission and the European Court of Auditors, the Inspectorates shall have the right to visit all or any site from which the Services are provided and view operations relating to the Services and to inspect relevant documents and interview Students and THE CONTRACTOR's staff during these visits.
- 14.3 THE CONTRACTOR shall ensure that it, its sub-contractors or agents, shall, on reasonable advance notice in writing permit access at any reasonable time to any of the representatives listed at Clause 14.2 in order to:
- 14.3.1 examine, audit or take copies of any original or copy documentation, accounts, books and records of THE CONTRACTOR and its sub-contractors that relate to the Contract;
 - 14.3.2 visit, view or assess the design, management and delivery relating to the Contract at any Premises where those operations are carried out (including those of sub-contractors) and conduct relevant interviews, including interviews with Students, during these visits at any reasonable time; and/or
 - 14.3.3 carry out examinations into the economy, efficiency and effectiveness with which THE CONTRACTOR has used THE SECRETARY OF STATE's resources in the performance of the Contract.
- 14.4 Where reasonably required, THE CONTRACTOR and its sub-contractors shall provide copies of any relevant documents required by any of the representatives listed at Clause 14.2.
- 14.5 THE CONTRACTOR shall, if required by any of the representatives stated at Clause 14.2 provide appropriate oral or written explanations.
- 14.6 THE ESFA reserves the right, at any reasonable time, and as it may deem necessary to require THE CONTRACTOR at its own cost to:
- 14.6.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform the Contract;
 - 14.6.2 obtain a report by an independent accountant of THE ESFA's choice on the financial systems and controls operated by THE CONTRACTOR in respect of payments claimed or received under the Contract;

- 14.6.3 provide a copy of THE CONTRACTOR's latest Accounts, audited prior to submission;
- 14.6.4 submit any claim for payment or management information provided to support a claim for payment to be reviewed by an independent accountant chosen by THE ESFA;
- 14.6.5 provide any additional evidence to support payments made under this Contract, as THE ESFA shall reasonably require.
- 14.7 THE CONTRACTOR shall in performing the Services comply fully with all relevant rules and regulations of THE ESFA in force from time to time.

15 Prohibited Activities

- 15.1 THE CONTRACTOR shall not offer, promise or give, a financial or any other advantage of any kind, to any member, employee or representative of THE ESFA intending the advantage to induce the person to, or reward them for, the improper performance of the relevant function or activity in relation to the obtaining, execution or conduct (including, but not limited to, the agreed Services) of this or any other Contract with THE ESFA. THE CONTRACTOR's attention is drawn to the criminal offences set out in the Bribery Act 2010. Any offence by THE CONTRACTOR, its employees, representatives or anyone associated with THE CONTRACTOR under the Bribery Act 2010 in relation to this or any other Contract with THE ESFA or any Crown Body shall entitle THE ESFA to terminate the Contract and recover from THE CONTRACTOR the amount of any loss resulting from such termination and/or to recover from THE CONTRACTOR the amount of value of any gift, consideration or commission.
- 15.2 THE CONTRACTOR shall not enter into any contract or arrangement with any political or religious organisation using any funding provided by THE ESFA under this Contract if the effect of that contract or arrangement would be to promote a particular political or religious point of view.
- 15.3 THE CONTRACTOR shall not hold itself out as acting on behalf of The SECRETARY OF STATE, the Department or THE ESFA without THE ESFA's written permission.
- 15.4 THE CONTRACTOR understands and agrees that the following costs are not Eligible Expenditure: - payments that support activity intended to influence or attempt to influence Parliament, government or political parties, or attempting to influence the awarding or renewal of contracts and grants, or attempting to influence legislative or regulatory action. The CONTRACTOR costs of memberships for their Associations are eligible expenditure.

16 Fraud and Irregularity

- 16.1 THE CONTRACTOR shall notify THE ESFA within 48 hours where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Contract including, but not limited to, cases of:
- 16.1.1 collusion with members of the staff of THE ESFA, or employees of THE ESFA, the Department or other Crown Body;
 - 16.1.2 internal fraud by staff of a value such that performance of the Contract is placed at material risk;
 - 16.1.3 computer fraud;
 - 16.1.4 the submission to THE ESFA of inaccurate, incomplete, misleading or falsified management information;
 - 16.1.5 fraud involving other Crown Bodies;
 - 16.1.6 provided that nothing in this Clause shall require THE CONTRACTOR to do anything, which may cause it to infringe any law.
- 16.2 Where THE ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Services under the Contract and payments made hereunder, THE ESFA, and/or its appointed representative shall have the right of access to THE CONTRACTOR's premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records and to interview THE CONTRACTOR's servants or agents engaged with the delivery of the Services under the Contract.
- 16.3 Where THE ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Services under the Contract or any other contract between THE ESFA and THE CONTRACTOR under which Services is delivered and payments made thereunder, it shall have the right to suspend payments under this Contract and any other contract between the Parties.
- 16.4 The Parties shall co-operate in the identification of Students who may be unlawfully claiming benefits. THE ESFA may from time to time brief THE CONTRACTOR as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Students. THE ESFA shall provide a named contact, named email address, or telephone answering machine for receiving such information.

17 European Funding and Other Sources of Funding

- 17.1 Where notified in writing by THE ESFA that this funding source is required to be used as match funding:
- 17.1.1 THE CONTRACTOR must not use the funding paid under this Contract to support bids or claims that will be used to secure funding from any European source, either on its own behalf or on behalf of THE ESFA, including but not

limited to match funding, without obtaining consent in writing from THE ESFA, that it may do so (such consent not to be unreasonably withheld);

- 17.1.2 Where THE CONTRACTOR or any of its sub-contractors has access to other funding streams, THE CONTRACTOR or any of its sub-contractors will be required to demonstrate through accounting, management information systems and any other relevant evidence (in the sole discretion of THE ESFA or any entity undertaking the audit or monitoring), to THE ESFA and any entity set out in clause 14.2 that no double funding has occurred in respect of the Services delivered under the Contract
- 17.1.3 Where THE ESFA identifies double funding in respect of the Services, or any part thereof, THE CONTRACTOR will be liable to repay to THE ESFA any sums paid, or part thereof, by THE ESFA in respect of the Services for which THE CONTRACTOR has received funding from another source and THE ESFA reserves the right to deduct such sums from any monies owed to THE CONTRACTOR under the Contract or any subsequent Contract;
- 17.1.4 THE ESFA reserves the right to use payments made under the Contract as match funding for European Social Fund Co-Financing Projects. Where requested to do so in writing by THE ESFA, THE CONTRACTOR shall provide such information and in the form as THE ESFA specifies to enable THE ESFA to comply with the requirements of the European Social Fund. THE CONTRACTOR shall if requested to do so by THE ESFA inform Students or others that Services delivered has been financed in whole or part by the European Social Fund. Any failure to provide such information as specified or to provide such information to students as specified shall constitute a minor breach of contract pursuant to clause 18 of the Contract;
- 17.1.5 General eligibility for European Social Fund Students 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. The Operational Programme can be found on <http://www.esf.gov.uk>. All Students receiving the Services specified under this Contract must meet the eligibility criteria defined in the ESF Operational Programme for England as well as the specific eligibility criteria described in the Contract.

Marketing and Publicity

- 17.2 THE CONTRACTOR will comply with written requests by THE ESFA to display the 2007/13 European Social Fund logos and emblems on any materials relating to funding by the ESF. THE ESFA will make available to THE CONTRACTOR all relevant 2007/13 European Social Fund logos and emblems.
- 17.3 THE CONTRACTOR must ensure that where it is agreed with THE ESFA that the use of logos in a document or other form of communication for promotional purposes is not practicable, the following wording is included: “This programme is part funded by the European Union through the European Social Fund”.

- 17.4 THE CONTRACTOR must ensure that all Students are aware of the support of the European Social Fund in respect of the Services being delivered under this Contract.
- 17.5 THE CONTRACTOR must ensure that where the use of logos in a document or other form of communication for promotional purposes is not practicable, the following wording is included: "This programme is co-financed by the Education and Skills Funding Agency."

18 Breach

18.1 For the avoidance of doubt:

18.1.1 Neither Party shall be liable for any Minor Breach or Serious Breach under this Clause, which occurs as a direct result of any act or omission by the other Party, its staff or agents; and

18.1.2 In the event of a breach the party not in breach may enforce the clauses in the Contract relating to breach even if it has not done so in the event of earlier breaches.

Minor Breach

18.2 Without prejudice to any other remedy, in the event of a Minor Breach, the Parties will adopt the following procedure:

18.2.1 The Party not in breach shall be entitled to serve written notice on the Party in breach, giving full details of the breach and requiring the other Party to remedy the breach within a specified period;

18.2.2 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Clause 18.2.1, or such other period as may subsequently be agreed in writing between the Parties, it shall constitute a Serious Breach by the Party in breach.

Serious Breach

18.3 Without prejudice to any other remedy, in the event of a Serious Breach, which in the view of THE ESFA is capable of remedy, the Parties shall adopt the following procedure:

18.3.1 The Party not in breach shall be entitled to serve written notice on the other Party giving full details of the breach and requiring the Party in breach to remedy the breach within a specified time period;

18.3.2 In the event that a Serious Breach of the Contract by THE CONTRACTOR in the view of THE ESFA is not, or cannot be, remedied within the period specified in the notice served under Clause 18.3.1, or such other period as

may subsequently be agreed in writing between the Parties, THE ESFA may:

- 18.3.2.1 require THE CONTRACTOR to suspend recruitment of Students to the Services to which the Serious Breach relates;
- 18.3.2.2 give consideration to the Serious Breach in its application of lagged learner funding when finalising the amount of funding in any subsequent Contract(s) between the Parties;
- 18.3.2.3 reduce, suspend or recover payment to THE CONTRACTOR in respect of that part of the Services to which the Serious Breach relates;
- 18.3.2.4 terminate, in accordance with Clause 19, in full or in respect of that part of the Services to which the Serious Breach relates.

18.4 In the event that any Serious Breach cannot be remedied at all or within the period specified in the notice served in accordance with Clause 18.3.1 or other such period as may be agreed in writing between the Parties, the Party not in breach may at its sole discretion terminate the Contract or that part of the Services to which the breach relates with immediate effect on notice in writing to the other Party.

19 Termination

19.1 Without prejudice to any other remedy, on the occurrence of a Serious Breach THE ESFA shall be entitled to terminate this Contract, in respect of that part of the Services to which the Serious Breach relates, by notice to THE CONTRACTOR with immediate effect.

19.2 THE ESFA shall be entitled to terminate this Contract, by notice in writing to the CONTRACTOR, with immediate effect where:

19.2.1 the outcome of any financial health and/or control assessment is inadequate;

19.2.2 THE CONTRACTOR fails to comply with requirements imposed under clause 6.6.1 and/or 6.6.2;

19.2.3 an Ofsted inspection results in the Services in part thereof being assessed as inadequate;

19.2.4 THE CONTRACTOR fails to comply with requirements imposed under 6.10.1 and/or 6.10.2;

19.2.5 an OFSTED inspection results in the Services being assessed as overall inadequate;

19.2.6 THE ESFA assesses that the Services delivered under this Contract, in

whole or part, are below the minimum standards; or

19.2.7 THE CONTRACTOR fails to comply with requirements imposed under 6.12.1 and/or 6.12.2.

- 19.3 THE ESFA shall be entitled to terminate this Funding Agreement on written notice if THE CONTRACTOR does not recruit or data returns reveal that no Students have been enrolled for the academic year to which this Funding Agreement relates. Where the ESFA terminates the Funding Agreement under this clause 19.3, THE ESFA will withdraw the allocation of Funding for the academic year and will take action to recover Funds where payments have already occurred.
- 19.4 If THE ESFA considers in its absolute discretion that on receipt of a notice pursuant to clause 21.3 the change in ownership of THE CONTRACTOR would prejudice THE CONTRACTOR's ability to deliver the Services, THE ESFA shall be entitled to terminate this Contract on notice in writing.
- 19.5 THE ESFA shall be entitled to terminate this Contract on written notice in case of THE CONTRACTOR entering administration, entering a Company Voluntary Arrangement (CVA) or the insolvency, liquidation or dissolution of THE CONTRACTOR.
- 19.6 In addition to the rights of termination under any other clauses of this Contract, either party shall be entitled to terminate this Contract in respect of all or part of the Services delivered under the Contract by giving to the other not less than three months' notice, in writing, to that effect without the need to give a reason for termination. Where this right is exercised by THE CONTRACTOR it shall be implemented at no cost to THE ESFA.
- 19.7 Termination under Clauses 18 and/or 19 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Contract.
- 19.8 On termination or expiry of this Contract for any reason, THE CONTRACTOR shall do its utmost to minimise disruption caused to Students and to assist the implementation of any contingency plan proposed by THE ESFA either prior to or after the termination or expiry of this Contract, to deal with the effects of such termination or expiry in so far as it is practicable to do so. The ESFA will not be liable for any costs incurred by THE CONTRACTOR in complying with this clause 19.8 or clauses 20.3 and 20.4.
- 19.9 THE CONTRACTOR shall upon termination of the Contract immediately deliver up to THE ESFA all correspondence, documents, specification papers and other property belonging to THE ESFA, which may be in its possession or under its control.

19.10 On termination of this Contract (however arising) THE ESFA may withhold any payments due to THE CONTRACTOR until such time that final reconciliation of the Parties liabilities are concluded.

19.11 On termination of this Contract (however arising) the accrued rights and liabilities of the Parties at termination and the following Clauses shall survive and continue in full force: 4 – 8 (inclusive), 10 – 12 (inclusive), 15, 20, 24, 26, 29, 30 and 31.

20 Transfer of Responsibility on Expiry or Termination

20.1 The Parties agree that if upon termination of this Contract or any part of the Services being delivered under the Contract, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 are applicable, the Parties shall in good faith co-operate with each other in the disclosure of information and the provision of other assistance and comply with the provisions of paragraph 8 of Schedule 3 so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties.

20.2 On termination or expiry of this Contract for any reason, THE CONTRACTOR shall do its utmost to minimise disruption caused to Students and to assist the implementation of any contingency plan proposed by THE ESFA either prior to or after the termination or expiry of this Contract, to deal with the effects of such termination or expiry in so far as it is practicable to do so.

20.3 THE CONTRACTOR shall, at no cost to THE ESFA, promptly provide such assistance and comply with such timetable as THE ESFA may reasonably require for the purpose of ensuring an orderly transfer of responsibility for the Services (or its equivalent) upon the expiry or other termination of this Contract. THE CONTRACTOR shall use all reasonable endeavours to ensure that its employees and its sub-contractors are under a similar obligation. THE ESFA shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Contract.

20.4 Such assistance may include, (without limitation) delivery of documents and data in the possession or control of THE CONTRACTOR or its sub-contractors, which relate to performance, quality, monitoring, management and reporting of the Programme, including the documents and data, if any, referred to in the Schedules.

20.5 THE CONTRACTOR undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of THE ESFA to ensure an orderly transfer of responsibility for delivery of the Services.

21 Assignment and Sub-Contracting

21.1 Where THE CONTRACTOR fails to apply the necessary management, monitoring and control over sub-contracted delivery, or fails to seek the necessary approval in advance in respect of whole programmes of study delivered at distance, as set out in the sub-contracting control regulations

<https://www.gov.uk/government/publications/funding-guidance-for-young-people-sub-contracting-controls>

THE ESFA may move the student numbers and associated funding away from the directly funded institution and/or also require the institution to discontinue the sub-contracting arrangement either with immediate effect or from the end of the current funding year

- 21.2 THE ESFA may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 21.3 THE CONTRACTOR shall not without the prior written consent of THE ESFA assign, novate or otherwise dispose of or deal in any other manner with (including by means of a change in ownership of THE CONTRACTOR) any or all of its rights, obligations or liabilities under this Contract. THE CONTRACTOR shall give THE ESFA at least 12 weeks notice of any such plans. THE ESFA reserves the right to take whatever actions it deems necessary, including but not limited to terminating the Contract if it considers in its absolute discretion that any, or any proposed, assignment, novation, disposal or other dealing, including any change in ownership of THE CONTRACTOR, may or would:
- a. put public funds at risk,
 - b. put at risk the delivery of provision to students, and/or
 - c. THE ESFA has any other material concerns about the proposed assignment, novation, disposal or other dealing.
- 21.4 Sub-contracting any part of the Contract shall not relieve THE CONTRACTOR of any obligation or duty attributable to THE CONTRACTOR under the Contract.
- 21.5 Services under this Contract may only be sub-contracted to one level.
- 21.6 Where THE CONTRACTOR has sub-contracted any duties or obligations arising out of this Contract, THE CONTRACTOR shall send copies of the sub-contract to THE ESFA if requested in writing to do so. Where THE CONTRACTOR enters into a sub-contract for the purpose of performing the obligations under the Contract, THE CONTRACTOR shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or CONTRACTOR within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

22 Force Majeure

- 22.1 Neither party shall be liable for any delay or failure to meet its obligations under this Contract due to any cause outside its reasonable control, including (without limitation), inclement weather, acts of God, war, riot, malicious acts of damage, civil commotion, strike, lockout, industrial dispute, refusal of licence, power failure or fire. If performance of the Services is substantially prevented for a continuous

period of 6 months by virtue of any of the aforesaid events, then either party may terminate this Contract by written notice to the other.

23 Public Reputations of the Parties/Press Releases

- 23.1 Both Parties recognise their respective public reputations and legal responsibilities. Each Party shall use all reasonable endeavours not to harm or compromise these.
- 23.2 The text of any press release or other communication to be published by or in the media concerning the subject matter of this Contract shall require the approval of each Party which shall not be unreasonably withheld or delayed.

24 Status of Contract

- 24.1 Nothing in this Contract shall have the effect of making THE CONTRACTOR the servant of THE ESFA. THE CONTRACTOR (if an individual) represents that he is regarded by both the Inland Revenue and THE Department for Work and Pensions as self-employed and accordingly shall indemnify THE ESFA against tax, national insurance contributions or similar imposed for which THE ESFA may be liable in respect of THE CONTRACTOR by reason of this Contract.

25 Waiver

- 25.1 No failure or delay on the part of either Party hereto to exercise any right or remedy under this Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Contract are cumulative and are not exclusive of any rights or remedies provided by law.

26 Severance

- 26.1 If any court or competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected.
- 26.2 If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original intention,

27 Third Party Rights

- 27.1 None of the terms of this Contract are intended to be enforceable by any participant or other third party not party to this contract.

28 Notice

- 28.1 Any notice or other document to be given under this Contract shall be in writing and shall be deemed to have been duly given if left at or sent by first class post by Royal Mail Special Delivery or other fast postal service or electronic media to a Party at the address or relevant telecommunications number for such Party or such other address as the Party may from time to time designate by written notice to the other.
- 28.2 All such notices and documents shall be in the English language. Any notice or other document shall be deemed to have been received by the addressee two working days following the date of despatch of the notice or other document by post or, where the notice or other document is sent by hand or on the day of delivery or where notice is given by facsimile or other electronic media, on the working day following the delivery or transmission provided that a printed report is obtained confirming successful transmission or if the addressee acknowledges receipt. To prove the giving of a notice or other document it shall be sufficient to show that it was despatched.

29 Governing / Jurisdiction

- 29.1 This Contract shall be governed by and construed in accordance with English Law.
- 29.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

30 Dispute Resolution

- 30.1 Any dispute, difference or question arising between the Parties either during the term of this Contract or afterwards shall be referred to the relevant ESFA Territorial team who will nominate a member of staff to lead discussion and review with a nominated representative of THE CONTRACTOR in order to try to resolve the same.
- 30.2 In the event that the nominated representatives are unable to resolve the dispute, difference or question, either of the Parties may (subject to clause 30.4 below), by written notice to the other party, refer the matter to a Dispute Resolution Panel ("the Panel") to attempt to reach a mutually acceptable resolution. The Panel shall be made up of one of THE ESFA's Territorial Directors and a senior representative from THE CONTRACTOR. The date of reference to the Panel will be agreed by the Panel themselves. The Panel shall meet within 14 days of the date of reference to them and the Panel shall use best endeavours to identify a mutually acceptable resolution.

- 30.3 In the event of the Dispute Resolution Panel failing to identify a mutually acceptable resolution within 28 days of the date of reference , then any dispute, difference or question arising out of or in connection with this Contract including any question regarding its existence, validity or termination, save for any matter or thing as to which the decision of THE ESFA is under this Contract deemed to be final and conclusive, shall be referred to and settled as far as possible by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- 30.4 If the Parties agree in writing, the dispute, difference or question that the nominated representatives were unable to resolve may be referred directly to mediation, in accordance with clause 30.3 above, without reference to the Panel.
- 30.5 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.
- 30.6 If Mediation does not reach a conclusion satisfactory to the Parties the dispute, difference or question shall be referred to and finally resolved by arbitration and the provisions of the Arbitration Act 1996 (or any statutory modification or re-enactment thereof) shall apply to such arbitration.
- 30.7 The arbitration will be conducted by a sole arbitrator, jointly agreed by THE CONTRACTOR and THE ESFA. In the event of the Parties being unable to agree the identity of the arbitrator within 14 days of the service of the Notice of Arbitration, either THE CONTRACTOR or THE ESFA may request the Chairman of the Chartered Institute of Arbitrators to make the appointment.
- 30.8 The place of arbitration shall be London, England

31 Entire Contract / Amendments

- 31.1 This Contract constitutes the entire Contract between the Parties and shall not be varied except by an instrument signed by the parties or accepted electronically via the Skills Funding Service (SFS).
- 31.2 By accepting this Contract via the Skills Funding Service (SFS) the person taking this action on behalf of THE CONTRACTOR represents and warrants that THE CONTRACTOR has read and understood this Contract for Services, THE CONTRACTOR agrees to be bound by this Contract for Services and that he/she is duly authorised to accept this Contract for Services and legally bind THE CONTRACTOR.

Please note that the Contract **must be:**
accepted by a member of staff that is authorised to legally bind THE CONTRACTOR;

Contract acceptance via SFS shall bind THE CONTRACTOR as set out in sub-clauses 31.1 and 31.2.

Schedule 1 – Service Specification

1. Definitions

2. The Services

Appendices and Annexes: Included as required

Appendix 1 – Payment Schedule

Annex 1 – 16 to 18 Residential Bursaries

Annex 2 – PE and Sports Grant

Annex 3 – Army Cadets

Annex 4 – Specialist Provision and High Need Students

Annex 5 – Closing Schools

Annex 6 – 16 to 19 Bursary Fund and Free Meals in FE

Annex 7 – Residential Support Scheme

1 Definitions

- 1.1 **“Funding Guidance 2017 to 2018”** means the documents <https://www.gov.uk/16-to-19-education-funding-guidance> which set out the detailed requirements with which THE CONTRACTOR must comply in respect of each Learning Programme delivered under this Contract. This includes Funding Regulations, Funding Rates and Formula, ILR Funding returns and Sub-contracting control regulations and any other guidance issued from time to time by THE ESFA.
- 1.2 **“Learning Programme”** means a programme of education and/or training delivered by THE CONTRACTOR under this Contract.

2. The Services

- 2.1. The Services to be delivered under this Contract is the delivery of the Learning Programmes as set out in the Appendices and Annexes to this Schedule. The detailed requirements in respect of each Learning Programme are set out in the Annexes to this schedule and/or the Funding Guidance for 2017 to 2018 <https://www.gov.uk/16-to-19-education-funding-guidance> as amended from time to time by THE ESFA and which form part of the terms and conditions of this Contract.
- 2.2 The maximum value for each Learning Programme as shown in Appendix 1 – Payment Schedule may not be exceeded for any reason except by an agreed variation in writing to the Contract. THE ESFA will not be liable to make any payment in excess of the maximum values set out in Appendix 1 – Payment Schedule or as varied in writing. Where the Contract period is longer than one year, funding for subsequent years is subject to funds being made available to THE ESFA. THE CONTRACTOR is not permitted to vire funding between Learning Programmes except by way of an agreed variation in writing to the Contract.

- 2.3 The Service is to be delivered in accordance with any specific requirements, any tender document submitted by THE CONTRACTOR and the Appendices and Annexes to this Schedule which sets out the activity and/or scheduled payment profiles for the Service agreed by the Parties, which all form part of the terms and conditions of the Contract.
- 2.4 THE CONTRACTOR agrees to deliver learning to the number of students detailed in the Appendices, which shall have the same total number of students. For the avoidance of doubt the overall maximum values for each Learning Programme at Appendix 1 – Payment Schedule may not be exceeded and should the calculated value of the volumes provided exceed the maximum Contract value then THE ESFA is under no obligation to provide any additional funding.
- 2.5 Where THE ESFA identifies that THE CONTRACTOR is failing to deliver learning to the volume of students for any Learning Programme set out in Appendices of Schedule 1 of this Contract it reserves the right in its absolute discretion to reduce the overall maximum value for that Learning Programme.
- 2.6 Unless otherwise stated the Funding and Activity described in the Appendices of Schedule 1 of this Contract relate exclusively to the 2017 to 2018 contracting period; 1st August 2017 to 31st July 2018.

Appendices and Annexes

For Independent Learning Providers the following appendices should be inserted (If applicable):

Appendix 1 – Payment Schedule

Annex 1 – 16 to 18 Residential Bursaries

Annex 2 – PE and Sports Grant

Annex 3 – Army Cadets

Annex 4 – Specialist Provision and High Need Students

Annex 5 – Closing Schools

Annex 6 – 16 to 19 Bursary Fund and Free Meals in FE

Annex 7 – Residential Support Scheme

Schedule 2 – Finance, Volume and Data Capture

- 1 Contract Details
- 2 Payment and Review of Contract Performance and Reconciliation
- 3 Payment Process
- 4 Evidence

1 Contract Details

- 1.1 THE CONTRACTOR shall deliver the Services specified in Schedule 1 of this Contract and subject to the terms and conditions of the Contract as detailed and in accordance with the Funding Guidance 2017 to 2018

<https://www.gov.uk/16-to-19-education-funding-guidance>

2 Payment and Review of Contract Performance and Reconciliation

- 2.1 THE ESFA agrees to pay to THE CONTRACTOR the amounts set out in Schedule 1 – Payment Schedule of this Contract on condition that THE CONTRACTOR delivers the Services in accordance with the terms and conditions of the Contract provided that THE CONTRACTOR is not assessed as being at serious risk of failure to deliver the Services under this Contract by THE ESFA following any review of the quality of the Services.
- 2.2 Payments from THE ESFA will be reconciled to the volume of students delivered and cash earned by actual delivery of the Services for the period to the timetable published in the Funding Guidance 2017 to 2018
<https://www.gov.uk/16-to-19-education-funding-guidance>
 - Where THE CONTRACTOR's actual delivery will result or has already resulted in an overpayment to THE CONTRACTOR by THE ESFA, THE ESFA reserves the right to deduct the amount owed from, payments due to THE CONTRACTOR under the Contract or any other Contract between the Parties, for current or subsequent months or years accordingly.
- 2.3 Where THE CONTRACTOR'S actual delivery has resulted in an underpayment to THE CONTRACTOR by THE ESFA, THE ESFA is under no obligation to provide additional funding or to adjust the amount due to THE CONTRACTOR accordingly. Any adjustment shall not exceed the overall maximum value set out in Appendix 1 – Payment Schedule, that forms part of Schedule 1 – Payment Schedule of this Contract.
- 2.4 A review will take place at the end of the period of this Contract in respect of the Provision specified in Schedule 1 – Payment Schedule of this Contract. THE ESFA will notify THE CONTRACTOR of the volume of learning and actual amount of money, which has been earned against the Services, delivered and compare this to the total profile payments made and to the overall maximum value specified in Schedule 1 above. At this stage THE ESFA reserves the right to conduct a final

cash reconciliation. Any overpayment made to THE CONTRACTOR by THE ESFA will be repayable within 30 days of receiving an invoice. THE ESFA reserves the right to reduce future payments to recover any overpayments. THE ESFA is under no obligation to pay any additional funding above the overall maximum value specified in Schedule 1 of this Contract.

3 Payment Process

- 3.1 All payments by THE ESFA will be made via BACS or CHAPS unless otherwise notified.
- 3.2 The maximum sum payable under this Contract, as set out in Appendix 1 – Payment Schedule, that forms part of Schedule 1 – Payment Schedule includes the cost of the service and any other VAT or taxes to be charged, where they apply.
- 3.3 Under the Provision of Item 5A to Group 6 of Schedule 9 of the VAT Act 1994, the supply of education or vocational training funded by THE ESFA, and the supply by the person providing that education or vocational training, of any good or Service essential to that Provision, is considered to be an exempt supply for VAT purposes.

4 Evidence

- 4.1 The evidence requirements in respect of each Learning Programme are set out in the Funding Guidance 2017 to 2018 <https://www.gov.uk/16-to-19-education-funding-guidance> and THE CONTRACTOR must retain such evidence for inspection on demand.

Schedule 3 - Special Conditions

- 1 Retention of Documents**
- 2 Disposal of Assets and Change of Use**
- 3 Supply of Data**
- 4 Feedback and Complaints**
- 5 Branding and logos**
- 6 Information, Advice and Guidance**
- 7 Not used**
- 8 Transfer of Undertakings (Protection of Employment) Regulations 2006**

1 Retention of Documents

- 1.1 THE CONTRACTOR and THE CONTRACTOR Related Parties shall maintain original invoices; management information returns and all other documents necessary to verify the Services provided by itself or by THE CONTRACTOR Related Parties in relation to this Contract for 6 years from the end of the financial year in which the last payment by is made

2 Disposal of Assets and Change of Use

- 2.1 In respect of Assets whose value exceeds £2,500 including VAT the following provisions shall apply.

- 2.2 For the purposes of this paragraph 2:

2.2.1 'Asset' shall mean any property, real or personal, tangible or intangible capable of being purchased for money or money's worth which has a continuous useful life of one year or more, regardless of whether or not it is treated as such by THE CONTRACTOR's accounting policy;

2.2.2 an Asset shall be considered to have been financed by THE ESFA if it has been acquired wholly or partly with funds provided by THE ESFA

2.2.3 the use of any Asset shall be considered to have changed if THE CONTRACTOR uses it for any purpose other than for the delivery of the Services under the Contract;

2.2.4 'the appropriate proportion thereof' shall be the proportion represented by the amount of funding provided by THE ESFA to acquire, develop or improve an

asset in relation to the entire price paid for its acquisition, or its market value when its development or improvement have been completed.

- 2.3 THE CONTRACTOR shall ensure that any Asset financed by THE ESFA is adequately insured.
- 2.4 THE CONTRACTOR shall inform THE ESFA if it proposes to dispose of, or change the use of, any Asset that has been financed by THE ESFA.
- 2.5 THE CONTRACTOR shall not dispose of any Asset financed by monies provided by THE ESFA unless it has first obtained the written consent of THE ESFA to such a disposal.
- 2.6 Where THE CONTRACTOR disposes of the Asset it shall pay to THE ESFA whichever is the greater either the amount of funding provided by THE ESFA in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, unless otherwise agreed with THE ESFA.
- 2.7 If THE CONTRACTOR changes the use of any such Asset it will be treated as a disposal and THE CONTRACTOR shall make a payment to THE ESFA in accordance with paragraph 2.6 above.
- 2.8 In the event of THE CONTRACTOR undergoing a change of control or in case of the insolvency, liquidation or dissolution of THE CONTRACTOR, all Assets financed by THE ESFA, or the equivalent portion of their market value, will become the property of THE ESFA.
- 2.9 The provisions of this clause 2 shall apply during the continuance of this Contract and after its termination howsoever arising. THE ESFA shall reserve the right to decide when its interest in Assets financed by THE ESFA under the terms of the Contract shall cease.

3. Supply of Data

- 3.1 THE CONTRACTOR must supply to the Education and Skills Funding Agency (ESFA), data on each individual Student, in accordance with the data collections framework set out in the [Individualised Learner Record \(ILR\) Specification 2017 to 2018](#) as amended and updated.
- 3.2 THE CONTRACTOR shall transmit data for each part of the Activities, electronically in a batch file as specified in the [ILR Specification 2017 to 2018](#).
- 3.3 Data collected must be transmitted to the ESFA's secure online portal: [The Hub](#). The Hub is restricted and THE CONTRACTOR confirms it has agreed to comply with the conditions of use regarding the supply of data to the ESFA.
- 3.4 THE CONTRACTOR must ensure that data is received by the ESFA in accordance with the data collection timetable. THE CONTRACTOR should refer to the ESFA's [ILR webpage](#) for additional data guidance and information.

- 3.5 The ESFA reserves the right to require THE CONTRACTOR, at its own cost, to carry out such work as the ESFA deems necessary to make a material improvement to the quality of data.
- 3.6 The ESFA reserves the right to suspend payments to THE CONTRACTOR under the Agreement where data quality gives rise to a material impact (in the view of the ESFA) upon the accuracy of the data provided by THE CONTRACTOR.
- 3.7 THE CONTRACTOR shall register with [UKRLP](#) and maintain contact details on an on-going basis.
- 3.8 At times, the ESFA will need to share information with THE CONTRACTOR. The ESFA will do this securely via The HUB. By accessing and using this system THE CONTRACTOR agrees to the terms and conditions detailed at the site governing how it accesses and use the portal. THE CONTRACTOR will need to ensure that it has the right hardware, operating system and browser.

4 Feedback and Complaints

- 4.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Services shall rest with THE CONTRACTOR. THE CONTRACTOR shall have procedures in place, which are acceptable to THE ESFA, to gather and act upon feedback and complaints from Students and/or their representatives and employers and the wider community.
- 4.2 THE ESFA may issue guidance for THE CONTRACTOR on dealing with feedback and handling complaints, and will set out the minimum standards expected.
- 4.3 THE CONTRACTOR shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by THE ESFA.
- 4.4 Where a complaint has not been resolved to the satisfaction of the complainant THE CONTRACTOR will advise the complainant of his or her right to complain to THE ESFA and co-operate with any investigation carried out by THE ESFA.

5 Branding and logos

- 5.1 THE CONTRACTOR shall when receiving funding from THE ESFA for any programme, meet the requirements of the endorsement branding guidelines, available on The Department website (www.DfE.gov.uk), on all and any promotional materials or activities. This shall include but not be limited to prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products. Failure to meet with this requirement could lead to a reduction in the amount of funding given.
- 5.2 The CONTRACTOR shall be given access to the current ESFA logos and statements, which are to be used. This requirement may include but not subject to

the use of Logo's from other co-branding or co-funding participants. Details will be available from THE ESFA's website or communications team.

- 5.3 This access, when granted, shall be limited to the use of the current logos and statements and under no circumstances will THE CONTRACTOR be allowed to amend or alter the logo on statements, nor use it for anything not covered by this Contract. Failure to comply with the requirements of this Clause shall constitute a Serious Breach under the Clause 18 of the General Terms and Conditions of this Contract.
- 5.4 All the terms of this Clause 5 shall also apply to THE CONTRACTOR'S sub-contractors in carrying out its responsibilities under this Contract.

6 Information, Advice and Guidance

- 6.1 As part of the delivery of the Services, THE CONTRACTOR will have to provide high quality, impartial and easily accessible information and advice in helping students to understand the opportunities and support available to them about education, training or connected matters (including employment).
- 6.2 Where one of the main objectives of the Services to be provided under this Contract is to deliver information and advice, THE CONTRACTOR will have to have or attain the matrix Standard accreditation within six months of the Contract being awarded; and
- 6.3 If the information and advice is embedded as part of the delivery of the Services, The CONTRACTOR should work towards achieving the matrix Standard Accreditation within a reasonable period.

7 Not used

8 Transfer of Undertakings (Protection of Employment) Regulations 2006

Definitions

- 8.1.1 "**Final Pay Details**" means the information set out in Appendix D;
- 8.1.2 "**Future Transfer Date**" means the date of termination or expiry of this Contract or any part of the Services to which employees are wholly or mainly assigned;
- 8.1.3 "**Future Transferring Employees**" means those employees of THE CONTRACTOR who are at the Future Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking (or otherwise assigned to the Services) which transfer(s) on the termination or expiry of this Contract (or any part of the Services) pursuant to TUPE to any Successor Contractor;

- 8.1.4 **"Identification Details"** means the information set out in Appendix E;
- 8.1.5 **"Initial Staff Information"** means the information set out in Appendix A;
- 8.1.6 **"Prescribed Particulars"** means in respect of each of the Future Transferring Employee the information set out in Appendix B;
- 8.1.7 **"Relevant Legislation"** means any statute or regulations or the EC Treaty (or any directives or regulations made there under);
- 8.1.8 **"Relevant Personnel Documentation"** means the information set out in Appendix C;
- 8.1.9 **"Successor Contractor"** means the person nominated by THE ESFA to undertake the services substantially the same as the Services after the termination of this Contract; and
- 8.1.10 **"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time.

No TUPE on Commencement

- 8.2 The parties acknowledge and agree their view that the commencement of the provision of the Services by the CONTRACTOR pursuant to this Contract shall not constitute a relevant transfer for the purposes of TUPE.

8.3 Not used

TUPE on Expiry of Contract or Partial Termination

- 8.4 In the event of the cessation of the performance of the Services or any part of the Services by THE CONTRACTOR under this Contract, the provisions of TUPE may apply to transfer an employee or employees of THE CONTRACTOR or its subcontractors to a Successor Contractor. If TUPE has or may have such effect (in the reasonable opinion of THE ESFA), the following provisions shall apply.
- 8.5 During the period of 18 months preceding the expiry of the Contract (or the termination of any part of the Services to which these provisions apply) or within 21 days after THE ESFA or THE CONTRACTOR has given notice to terminate the Contract (or such part of the Services), THE CONTRACTOR shall disclose to THE ESFA and shall permit THE ESFA to disclose to any tenderer for services which are substantially the same as the Services, the Initial Staff Information provided that prior to so doing any such tenderer shall have executed in writing a confidentiality undertaking in favour of THE CONTRACTOR.
- 8.6 During the period of three months preceding the expiry of this Contract (or the termination of any part of the Services to which these provisions apply) or within 21 days after THE ESFA or THE CONTRACTOR has given notice to terminate the

Contract (or such part of the Services) , THE CONTRACTOR shall, subject to the provisions of the Data Protection Act 1988, provide and thereafter keep updated at monthly intervals, to THE ESFA and to the Successor Contractor information equivalent to the Relevant Personnel Documentation and the Prescribed Particulars in respect of each employee whom THE CONTRACTOR reasonably believes will be a Future Transferring Employee provided that prior to so doing the Successor Contractor nominated by THE ESFA shall have executed in writing a confidentiality undertaking in favour of THE CONTRACTOR.

- 8.7 THE CONTRACTOR shall make reasonable endeavours to assist the Successor Contractor to communicate with, meet and inform and consult with the employees whom THE CONTRACTOR reasonably believes will be a Future Transferring Employee and their trade union or other employee representatives for the purposes of complying with TUPE.
- 8.8 THE CONTRACTOR shall immediately prior to the Future Transfer Date provide to THE ESFA or the Successor Contractor a complete and accurate list of the Prescribed Particulars and Identification Details of all employees whom it reasonably believes will be Future Transferring Employees.
- 8.9 Within a period of 21 days following the expiry or termination of this Contract (or the termination of any part of the Services to which these provisions apply) THE CONTRACTOR shall provide to THE ESFA or the Successor Contractor in writing Final Pay Details of the Future Transferring Employees.
- 8.10 THE CONTRACTOR warrants that it shall supply complete and accurate information pursuant to clause 8 in all material respects and THE CONTRACTOR shall indemnify and keep THE ESFA indemnified fully now and in the future in respect of all or any costs whether arising in contract or under any Relevant Legislation suffered or incurred by THE ESFA or the Successor Contractor(s) nominated by THE ESFA by reason of any proceeding, claim or demand arising from or in connection with the provision of information and/or the failure to provide complete and accurate information under clause 8, and/or the provision of assistance and/or failure to provide assistance under clause 8 of this Contract.
- 8.11 After receiving notice of the termination of this Contract and for six (6) months preceding expiry of this Contract (or the termination of any part of the Services to which these provisions apply) THE CONTRACTOR shall promptly notify THE ESFA or the Successor Contractor:
- 8.11.1 Of the period of notice given by THE CONTRACTOR or received from any employee whom THE CONTRACTOR reasonably believes will be a Future Transferring Employee regardless of when such notice is to take effect;
- 8.11.2 Of the termination, for whatever reason, of the employment of any employee whom THE CONTRACTOR reasonably believes will be a Future Transferring Employee; and
- 8.11.3 Of any other change to any employee whom THE CONTRACTOR reasonably believes will be a Future Transferring Employee and their terms

and conditions of employment, their Prescribed Particulars and their Relevant Personnel Documentation.

- 8.12 THE CONTRACTOR warrants that it shall supply the Required Information completely and accurately in all respects at the time of supply and shall indemnify and keep THE ESFA and/or any Successor Contractor indemnified in respect of all and any costs suffered or incurred by THE ESFA or the Successor Contractor by reason of any proceedings, claim or demand arising out of or in connection with:
- 8.12.1 Any claim against THE ESFA or the Successor Contractor by or in respect of any Future Transferring Employee so far as it relates to any act or omission of THE CONTRACTOR after the Employee Transfer Date and prior to the Future Transfer Date; and
- 8.12.2 Any alleged or actual breach of TUPE by THE CONTRACTOR or its subcontractors; and
- 8.12.3 Any claim against THE ESFA or the Successor Contractor by any person whose name is not included on the list of Future Transferring Employees by THE CONTRACTOR pursuant to clause 8 and who asserts or in respect of whom it is asserted that his or her employment has transferred pursuant to TUPE to THE ESFA or a Successor Contractor or otherwise that THE ESFA or a Successor Contractor has inherited liability in respect of them pursuant to TUPE.
- 8.13 For the purposes of Clause 8.12.3, in the event that THE ESFA or the Successor Contractor incurs costs, liabilities or expenditure in respect of Future Transferring Employees which is greater than would have been the case if the Required Information supplied by THE CONTRACTOR had been accurate and complete, then such (net) greater costs, liabilities or expenditure shall be deemed to be costs suffered or incurred by THE ESFA or Successor Contractor and included within the indemnity provided by THE CONTRACTOR.
- 8.14 THE ESFA or Successor Contractor shall be entitled to recover from THE CONTRACTOR in full any legal, accountancy and other costs actually and reasonably incurred by THE ESFA or Successor Contractor in connection with the costs and liabilities indemnified by THE CONTRACTOR.

APPENDIX A TO CLAUSE 8 SCHEDULE 3

“Initial Staff Information” Means:

1. Number of staff to be transferred;
2. Gender;
3. Date of Birth;
4. Whether disabled for the purposes of the Equality Act 2010;
5. Job description;
6. Work Location;
7. Conditioned hours of work per week;
8. Date of commencement of continuous employment and (if different) the commencement date;
9. Relevant Personnel Documentation;
10. Annual salary and rates of pay band/grade including pending increases;
11. Shifts, unsociable hours or other premium rates of pay;
12. Allowance and bonus details over the last twelve (12) Months including date, type, amount and pending allowances/bonuses;
13. Leave entitlement;
14. Any factors affecting redundancy entitlement;
15. Whether currently on maternity leave or other long term leave of absence;
16. Details of all dismissals or terminations of employment within the preceding six (6) Months of anyone previously employed to or engaged in connection with the Services of the Services;
17. Details of all Contracts or arrangements (whether or not legally binding) entered into in relation to the staff with any trade union or organisation or body representing employees or with any employee representatives;
18. Details of all trade disputes and industrial action occurring at any time during the preceding twelve (12) Months to which any member of staff was a party;
19. Details of any trade union or organisation or body representing employees.

APPENDIX B TO CLAUSE 8 SCHEDULE 3
“PRESCRIBED PARTICULARS” MEANS:

1. Personal Details

Gender;
Date of Birth;
Whether known to be disabled for the purposes of the Equality Act 2010, and details of any reasonable accommodation in respect thereof;

2. Employment Details

Job Title;
Staff Number;
Job Description;
Work Location;
Conditioned hours of work per week;
Date of commencement of continuous employment and (if different) commencement date;
Relevant Personnel Documentation;
Notice Periods (for employer and employee);
Annual salary and rates of pay band/grade including pending salary increases;
Shifts, unsociable hours or other premium rates of pay;
Overtime entitlement and details of last twelve (12) Months overtime;
Allowance and bonus details over the last twelve (12) Months including date, type, amount and pending allowances/bonuses;
Provisional details about standing loan/advances on salary or debts;
Existing and future training or sponsorship commitments;
Leave entitlement and accrued leave entitlement including any leave outstanding or expected to be outstanding at the Future Transfer Date;
Annual leave reckonable service date;
Additional employment benefits;
Other payments;
Copies of pay slip data for immediately preceding five (5) Months;
Provisional details of Cumulative Pay (for tax and pension purposes) and cumulative tax paid;
Tax Code;
Voluntary deductions from pay;
National Insurance (NI) Number,
NI Contributions rate;
NI benefit start date;

3. Records of Employment Service

Last two appraisal report markings and/or performance assessment details and dates thereof;
Sickness and absence records for two (2) years immediately preceding (including maternity leave);

Details of any current warnings for breach of discipline or poor performances including warning reason, warning date, warning status and start and end date or penalty period.

Details of any other outstanding disputes or grievances including all proceedings before any Employment Tribunal.

4. Method of payment

Instrument of payment;

Bank/building society account details for payroll purposes.

5. Pensions

For pension purposes, the notional reckonable service date;

Pensionable pay history for preceding 3 years;

Percentage of any pay currently contributed under additional voluntary contribution arrangements;

Percentage of pay currently contributed under any added years arrangements.

APPENDIX C TO CLAUSE 8 SCHEDULE 3

“RELEVANT PERSONNEL DOCUMENTATION” MEANS:

1 General Practices and Policies

Maternity, paternity and parental leave (including names of those on long-term leave or maternity leave);
Special leave and career breaks;
Sick leave and pay;
Disciplinary/grievance policy and procedures;
Equal Opportunities policy;
All documents relevant to terms and conditions of employment, including manuals, codes, handbooks, procedure guides, publications and Contracts (including collective Contracts);
Any other letters or documents or collective Contracts affecting terms and conditions of employment.

2 Redundancy

Full details of any practice, policy or procedure which THE CONTRACTOR has in relation to redundancy and copies of relevant documents.

APPENDIX D TO CLAUSE 8 SCHEDULE 3

“FINAL PAY DETAILS” MEANS:

In respect of each Future Transferring Employee, the following information:

Final Month's copy pay slip data;
Cumulative pay for tax and pension purposes;
Cumulative tax paid;
Tax code.

APPENDIX E TO CLAUSE 8 SCHEDULE 3

“IDENTIFICATION DETAILS” MEANS:

1. In respect of each Future Transferring Employee, the following information:
 - Name
 - Home Address
 - Work Telephone Number
 - Home Telephone Number (where available)
 - Next of Kin

APPENDIX F TO CLAUSE 8 SCHEDULE 3

ODPM Circular 3/2003: Best Value Performance Improvement

This circular can be found at:

<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/index.asp?id=1163718>

APPENDIX G TO CLAUSE 8 OF SCHEDULE 3

TRANSFER VALUES

Bulk transfer values will be inserted in the Contract prior to signing.