



Education & Skills  
Funding Agency

**Contract Type**            Contract for Services

**Funding Period**        1 August 2018 to 31 July 2019

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

**And**

**Funding for**              Student Support

**Contract Number**

**ACCEPTANCE BY PROVIDER**

By accepting this Contract via the Skills Funding Service the person taking this action on behalf of THE CONTRACTOR represents and warrants that THE CONTRACTOR has read and understood this Contract, THE CONTRACTOR agrees to be bound by this Contract and that he/she is duly authorised to accept this Contract and legally bind THE CONTRACTOR.

This Contract is made on the date the Contract is digitally signed by THE CONTRACTOR on the Skills Funding Service.

**SIGNED FOR AND ON BEHALF OF  
THE SECRETARY OF STATE FOR EDUCATION**

acting through the Education and Skills Funding Agency  
by Eileen Milner, Chief Executive of the Education & Skills Funding Agency

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This Contract is made on the date the Contract is digitally signed by THE CONTRACTOR on the Skills Funding Service between:

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**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 bursary funding for:
  - 1 students aged 16 to 18, and
  - 2 high needs students aged 16 to 18, or any young person aged 19 to 25 subject to an Education Health and Care Plan.

### **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 2018;

- 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 2018;
- 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 "**Eligible Expenditure**" means expenditure solely for the purpose of delivering the Services set out and agreed in the Appendices and Annexes of this Contract.
- 2.1.13 "**THE ESFA**" or "**ESFA**" means the Education and Skills Funding Agency, an Executive Agency of the Department for Education;
- 2.1.14 "**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);

- 2.1.15 “**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;
- 2.1.16 “**FOIA notice**” means a decision notice, enforcement notice and/or an information notice;
- 2.1.17 “**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
- 2.1.18 “**the Information Authority**” means the Information authority administered by the Secretary of State for Business, Innovation and Skills;
- 2.1.19 “**Inspectorates**” means one, any or all of the inspectorates: Ofsted, Her Majesty’s Inspectorate for Education and Training in Wales (Estyn) and the Care Quality Commission (CQC);
- 2.1.20 “**Ofsted**” means the Office for Standards in Education, Children’s Services and Skills;
- 2.1.21 “**Minor Breach**” shall mean 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;
- 2.1.22 “**Parties**” means THE ESFA, on behalf of the Secretary of State, and THE CONTRACTOR;
- 2.1.23 “**Premises**” means the location/s where the Services are to be performed, as detailed in the Contract;
- 2.1.24 “**SECRETARY OF STATE**” means the SECRETARY OF STATE for Education;
- 2.1.25 “**Serious Breach**” shall mean 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.

- 2.1.26 “**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;
- 2.1.27 “**Service Specification**” means the service specification set out in Schedule 1 and any Annexes contained within this Contract;
- 2.1.28 “**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 2018 and shall finish on 31 July 2019 unless this Contract is terminated in accordance with Clause 20.

## **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. 16 to 19 Bursary Fund Guide  
[2018 to 2019 16 to 19 Bursary Fund guide](#).
  - b. the post-16 audit code of practice: <https://www.gov.uk/government/publications/post-16-audit-code-of-practice>

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 Funding Allocated**

- 5.1 The funding allocated and to be administered by THE CONTRACTOR under this Contract is set out in Appendix 1, the Annex and Schedules of this Contract
- 5.2 Detailed requirements are set out in the Annex to this Contract and the [2018 to 2019 16 to 19 Bursary Fund guide](#) (including documents referred to therein), as amended from time to time by THE ESFA and which form part of the terms and conditions of this Contract.
- 5.3 The maximum value as shown in Appendix 1 – Payment Schedule may not be exceeded for any reason except by an agreed variation in writing to the Contract pursuant to clause 32. 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.
- 5.4 THE CONTRACTOR is not permitted to utilise funding for any purpose other than that described in the 2018 to 2019 16 to 19 Bursary Fund Guide
- 5.5 The allocated funding relates exclusively to the 2018 to 19 contracting period; 1 August 2018 to 31 July 2019.



## **6 Payment**

- 6.1 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.
- 6.2 All payments by THE ESFA will be made via BACS, unless otherwise notified, and will be made on the 20<sup>th</sup> of each month or the prior working day.
- 6.3 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.
- 6.4 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 [2018 to 2019 16 to 19 Bursary Fund guide](#).) 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.

## **7 Not used**

## **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 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**

12.1 In this clause 12, the following words and expressions shall be defined as follows:

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

**Processor Personnel:** means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract.

**Data Protection Legislation** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** take the meaning given in the GDPR.

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

**Data Subject Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**DPA 2018:** Data Protection Act 2018.

**GDPR:** the General Data Protection Regulation (*Regulation (EU) 2016/679*).

**LED:** Law Enforcement Directive (*Directive (EU) 2016/680*).

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in the Terms and Conditions of the Contract.

**Sub-processor:** any third Party appointed to process Personal Data on behalf of that Processor related to this Contract.

- 12.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the ESFA on behalf of the Secretary of State for Education is the Controller and the CONTRACTOR is the Processor only for the processing set out in Schedule 2. Any other processing of Personal Data undertaken by the Contractor will be as a Data Controller and not on behalf of the ESFA. Clauses 12.3 to 12.15 below apply only in relation to the processing of Personal Data on behalf of the ESFA as set out in Schedule 2, and the only processing that the Processor is authorised to do on behalf of the ESFA is listed in Schedule 2 by the ESFA and may not be determined by the Processor.
- 12.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 12.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

12.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Schedule 2, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that:
  - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 2);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:



- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

12.6 Subject to clause 12.7, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request) in relation to processing their data under this Contract;
- (b) receives a request to rectify, block or erase any Personal Data. Notification in such cases should be given via the ILR;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

12.7 The Processor's obligation to notify under clause 12.6 shall include the provision of further information to the Controller in phases, as details become available.

12.8 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 12.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event;
- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

12.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the processing is not occasional;
- (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

12.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

12.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

12.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 12 such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

- 12.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 12.14 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 12.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### **13 Not used**

### **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. THE CONTRACTOR must agree the instructions for the work with the ESFA and this may include the ESFA discussing the terms of reference directly with the independent accountant where necessary. The report and the work required in order to produce the report shall be carried out to the satisfaction of the ESFA, and the ESFA must be able to place reliance on it. THE CONTRACTOR shall provide a copy of any draft report at all stages of reporting and the final report to the ESFA as soon as they are available. The ESFA reserves the right to require THE CONTRACTOR to publish the final report;
- 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 Where THE ESFA has undertaken an investigation or received a report from an independent accountant or otherwise, in relation to THE CONTRACTOR, it may, as a consequence of that investigation or report, require THE CONTRACTOR to, and THE CONTRACTOR shall, accept and comply with additional conditions of funding.
- 14.8 Where THE CONTRACTOR fails to comply with the conditions of funding imposed under clause 14.7, within such time as the ESFA deems reasonable, the ESFA may take such actions as it deems appropriate which may include, but is not limited to, under Clause 19.2 Minor Breach or Clause 19.3-19.4 Serious Breach.
- 14.9 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 Additional Contractual Obligations**

- 17.1 THE ESFA reserves the right to impose additional contractual obligations where it considers it is necessary.

## **18 Retention of Documents**

- 18.1 THE CONTRACTOR and Contractor Related Parties shall maintain original invoices; management information returns and all other documents necessary to verify the Services provided by itself or by 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.

## **19 Breach**

- 19.1 For the avoidance of doubt:

19.1.1 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

19.1.2 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**

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

19.2.1 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;

19.2.2 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Clause 19.2.1, 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

19.3 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:

19.3.1 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;

19.3.2 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 19.3.1, or such other period as may subsequently be agreed in writing between the Parties, THE ESFA may:

19.3.2.1 require THE CONTRACTOR to suspend recruitment of Students to the Services to which the Serious Breach relates;

19.3.2.2 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;

19.3.2.3 reduce, suspend or recover payment to THE CONTRACTOR in respect of that part of the Services to which the Serious Breach relates;

19.3.2.4 terminate, in accordance with Clause 20, in full or in respect of that part of the Services to which the Serious Breach relates.

19.4 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 19.3.1 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.

## **20 Termination**

20.1 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.

- 20.2 If THE ESFA considers in its absolute discretion that on receipt of a notice pursuant to clause 22.3 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.
- 20.3 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.
- 20.4 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.
- 20.5 Termination under Clauses 19 and/or 20 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.
- 20.6 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 20 or clauses 21.2 and 21.3.
- 20.7 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.
- 20.8 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.
- 20.9 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 – 6 (inclusive), 8, 10 – 12 (inclusive), 15, 21, 25, 27, 30, 31 and 32.



## **21 Transfer of Responsibility on Expiry or Termination**

- 21.1 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.
- 21.2 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.
- 21.3 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.
- 21.4 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.

## **22 Assignment and Sub-Contracting**

- 22.1 Where THE CONTRACTOR fails to apply the necessary management, monitoring and control over sub-contracted delivery, or fails to seek the necessary approval from ESFA 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. The ESFA may also take this action in respect of other subcontracting arrangements that THE CONTRACTOR has in place.
- 22.2 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.
- 22.3 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.

22.4 Sub-contracting any part of the Contract shall not relieve THE CONTRACTOR of any obligation or duty attributable to THE CONTRACTOR under the Contract.

22.5 Services under this Contract may only be sub-contracted to one level.

22.6 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.

## **23 Force Majeure**

23.1 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.

## **24 Public Reputations of the Parties/Press Releases**

24.1 Both Parties recognise their respective public reputations and legal responsibilities. Each Party shall use all reasonable endeavours not to harm or compromise these.

24.2 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.

24.3 In addition to the other requirements to provide information set out in this Contract, the ESFA reserves the right to request information from THE CONTRACTOR in order to exercise its responsibilities and/or to fulfill requirements to provide

information to the Secretary of State, to account to Parliament and to meet European funding requirements (where applicable). On occasion, the ESFA will require urgent information from THE CONTRACTOR.

24.4 THE CONTRACTOR shall provide the ESFA or agents acting on its behalf with the information it requires under clause 24.3 at the times and in the formats specified. This information shall be of sufficient quality to meet the purposes for which it has been requested.

24.5 Failure to comply with any request for information under clause 24.3, at all or in the required timescales, will constitute a Minor / Serious Breach of this Contract.

## **25 Status of Contract**

25.1 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.

## **26 Waiver**

26.1 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.

## **27 Severance**

27.1 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.

27.2 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,

## **28 Third Party Rights**

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

## **29 Notice**

- 29.1 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.
- 29.2 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.

## **30 Governing / Jurisdiction**

- 30.1 This Contract shall be governed by and construed in accordance with English Law.
- 30.2 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).

## **31 Dispute Resolution**

- 31.1 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.
- 31.2 In the event that the nominated representatives are unable to resolve the dispute, difference or question, either of the Parties may (subject to clause 31.4 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.
- 31.3 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.

- 31.4 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 31.3 above, without reference to the Panel.
- 31.5 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.
- 31.6 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.
- 31.7 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.
- 31.8 The place of arbitration shall be London, England

## **32 Entire Contract / Amendments**

- 32.1 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).
- 32.2 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 32.1 and 32.2.**

## **Schedule 1 – Service Specification**

- 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 Annex 1 of this Contract and subject to the terms and conditions of the Contract as detailed and in accordance with the 16 to 19 Bursary Fund Guidance 2018 to 2019.

### **2 Payment and Review of Contract Performance and Reconciliation**

- 2.1 THE ESFA agrees to pay to THE CONTRACTOR the amounts set out in Appendix 1 of this Contract on condition that THE CONTRACTOR administers the funding allocated in accordance with the terms and conditions of this Contract.
- 2.2 Following reconciliation, or otherwise where THE ESFA determines it is appropriate, 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. THE ESFA is under no obligation to provide additional funding or to adjust the amount due to THE CONTRACTOR

### **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, that forms part of Schedule 1 includes the cost of the service and any other VAT or taxes to be charged, where they apply.

### **4 Evidence**

- 4.1 The evidence requirements in respect of each Learning Programme are set out in the 16 to 19 Bursary Fund Guidance 2018 to 2019

## SCHEDULE 2

### Processing, Personal Data and Data Subjects

Description	Details
Subject matter of the Processing	<p>The subject matter is the personal data of Students for whom bursary funding is being provided by the ESFA that are subject to this Contract as defined in the ESFA privacy notice and any specifications as set out in 2018 to 2019 16 to 19 Bursary Fund Guide .</p> <p><a href="https://www.gov.uk/government/publications/esfa-privacy-notice">https://www.gov.uk/government/publications/esfa-privacy-notice</a></p>
Duration of the Processing	<p>The duration of the Processing covers the academic year data returns to the ESFA as set out in 2018 2019 16 to 19 Bursary Fund Guide to enable funding and audit of the learning programmes defined in this Contract.</p>
Nature and purposes of the Processing	<p>The nature and purposes of the processing is defined in the ESFA privacy notice.</p> <p><a href="https://www.gov.uk/government/publications/esfa-privacy-notice">https://www.gov.uk/government/publications/esfa-privacy-notice</a></p> <p>THE CONTRACTOR will be required to submit the data to the ESFA as set out in 2018 to 2019 16 to 19 Bursary Fund Guide</p>
Type of personal data	<p>The personal data to be processed is as set out in 2018 2019 16 to 19 Bursary Fund Guide.</p>
Categories of data subject	<p>The data subjects are Students for whom bursary funding is being provided by the ESFA that are subject to this Contract.</p>
Description	Details
Retention and destruction of the data once the processing is complete UNLESS requirement under union or member state	<p>Information on how the data must be supplied to the ESFA is detailed in the 16 to 19 Bursary Fund Guide</p> <p>For the purposes of the DfE as a data controller of the data, THE CONTRACTOR is required to retain the data for the funding and audit purposes set out in this Contract for 6 years from the end of the financial year in which the</p>

law to preserve that type of data	last payment is made under this Contract.  THE CONTRACTOR (and any other data controller) is responsible for determining any further need to process the data, including its retention, prior to secure destruction.
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## 16 to 19 Bursary Fund and Free Meals in further education

### Definitions

The 16 to 19 Bursary Fund provides financial support to help students aged over 16 and under 19 at 31 August 2018 (for support in the 2018 to 2019 academic year) overcome specific barriers to participation so they can remain in education.

Students aged over 19 can apply for the discretionary bursary if they have an Education, Health and Care Plan (EHCP) or are continuing on a course they started aged between 16 and 18 (a '19+ continuer').

There are 2 types of 16 to 19 bursaries:

- Bursaries for vulnerable groups of up to £1,200 a year for young people in one of the defined groups:
  - in care
  - care leavers
  - receiving Income Support or Universal Credit because they are financially supporting themselves or financially supporting themselves and someone who is dependent on them and living with them such as a child or partner.
  - receiving Disability Living Allowance or Personal Independence Payments in their own right as well as Employment and Support Allowance or Universal Credit in their own right.
- discretionary bursaries which institutions award to meet individual needs, for example, help with the cost of transport, meals, books and equipment. Institutions must assess each student's financial needs individually when deciding whether and how much discretionary bursary to award

Institutions should draw down funding (by submitting a funding claim) for bursaries for vulnerable groups from the Student Bursary Support Service (SBSS) when they have identified, and seen evidence to verify, students who meet the criteria. Funding claims are submitted via the [SBSS online portal](#). Funding claim forms for the 2018 to 2019 academic year will be available from August 2018.

### Funding allocations

The ESFA will provide funding for discretionary bursaries, the amounts shown in Appendix 1 within the contract, for the period 1 August 2018 until 31 July 2019.

Institutions should manage the funding directly, deciding which students are eligible for help and how much they receive, in line with the 16 to 19 Bursary Fund guide for the 2018

to 2019 academic year and their own policies. Institutions must ensure that all students awarded support from either type of bursary funding meet the eligibility criteria, including age and residency, as set out in the [2018 to 2019 16 to 19 Bursary Fund guide](#).

For the 2018 to 2019 academic year, there will again be no ring fence between 16 to 19 bursary fund and free meals in further education allocations. Institutions are reminded, however, that free meals in further education remains an entitlement for those students who meet the eligibility criteria. Institutions must ensure they manage the single allocation appropriately to ensure all eligible students who successfully make an application are provided with a meal in line with the [2018 to 2019 free meals in further education guide](#).

Institutions that are in scope for both the 16 to 19 Bursary Fund and free meals in further education schemes are permitted to use up to 5% of the combined allocation for administrative costs. Institutions must ensure they do not take a sum that is greater than 5% of the single allocation.

Where institutions receive a 16 to 19 Bursary Fund allocation only, they are permitted to use up to 5% of the allocation for administrative costs.

Where an institution operates out of more than one location across England, or through sub-contracts, ESFA will make the allocation to the lead office for distribution to each site. Institutions should ensure that any young people attending provision delivered by sub-contractors are able to apply for the 16 to 19 Bursary Fund. It is the institution's responsibility to ensure the bursary fund is administered appropriately by any sub-contractors.

## **Funding Guide**

The contractor, education provider or local authority will use the funding in accordance with the scheme funding guides for the 2018 to 2019 academic year; as amended and updated from time to time, which forms part of the terms and conditions of this Contract.

## **Managing bursary underspends and recycling bursary for vulnerable groups payments**

### **Underspends**

Institutions are permitted to carry unspent bursary funds over to the next academic year. Where institutions are given a single overall allocation that includes funding for both free meals and the discretionary bursary, they can carry forward funds from both schemes. The funding may be used for either free meals or discretionary bursary payments in the new academic year. Any funds that are carried forward must continue to be used to support students. They cannot be added to general institution funds.

Institutions must fully utilise any unspent funds for either discretionary bursary or free meals before using their new academic year allocation.

If an institution has funds remaining from previous academic years or is clear that they do not need the full amount of funding available to them in the 2018 to 2019 academic year (i.e. their bursary allocation and free meals in further education allocation for that year;

plus any funds rolled forward from the previous year) they must contact ESFA to return them.

### **Recycling bursary for vulnerable group funds**

Institutions may accrue some unused bursary for vulnerable group funds during the academic year, for example, if a student leaves early after receiving only part of their bursary or if the full amount is not paid to a student because they did not meet the agreed conditions

Up to 30 April 2019, institutions are expected to recycle this funding and use it to offset against claims to the SBSS for other vulnerable students. For example, rather than claiming £1,200 for a newly identified vulnerable student, the institution may have £600 that is not now being used for a student who has left early. The £600 could be recycled for the new student and £600 claimed from the SBSS to reach the total required.

Where funds from a previous vulnerable student are being recycled and institutions require no additional funding (because the full amount can be covered from funds the institution already has), a funding claim form should still be submitted to the SBSS to ensure ESFA has accurate information on the numbers of vulnerable students.

From 1 May 2019, institutions can add any bursary for vulnerable group funding claimed, but no longer required for vulnerable students, to their 2018 to 2019 academic year bursary and free meals in further education funding.

### **Raising awareness/encouraging applications**

The contractors shall ensure information about the 16 to 19 bursary fund is available on its website and on any published or transmitted promotional materials, including social media and physical visits to schools etc. Institutions should publish clear statements about their bursary fund policies and it must be clear to students that they are being supported by the 16 to 19 bursary fund. Institutions should be mindful of the latter point when considering developing their own financial support branding.

Promotional information about the scheme must include at a minimum the basic information set out here:

*“The 16-19 Bursary Fund provides financial help for young people aged 16 to 19 who face barriers to staying in education. It is available to 16-19 year olds studying in school/academy sixth forms, colleges and training providers in England. There are two types of bursary available:*

- *bursaries of £1,200 a year for the most vulnerable young people; and*
- *discretionary bursaries based on individual need, such as help with the costs of travel, equipment or meals.*

*Your school, college or training provider can tell you more. You can ask them to assess your needs to see if you are eligible”*

## **Management Information**

Institutions are strongly encouraged to complete the ILR (Learner Funding and Monitoring (FAM); learner support reason) to report students who have been assessed as eligible for either or both of the two types of bursary and who have taken up the funding.

Institutions must also report students who have been assessed as eligible for, and who have taken up, free meals in further education support in the ILR.