



<b>Contract Type</b>	Contract for Services
<b>Funding Period</b>	1 January 2018 to 31 March 2021
<b>Between</b>	the Secretary of State for Education (acting through the Education and Skills Funding Agency)
<b>And</b>	
<b>Funding for</b>	Procured Non levy Apprenticeships Education and Training
<b>Contract Number</b>	

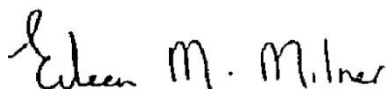
## ACCEPTANCE BY THE CONTRACTOR

By accepting this Contract via the Manage your education and 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 Manage your education and 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



## Terms and Conditions

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Schedule 1 – TUPE

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## Terms and Conditions

This Contract is made on the date the Contract is digitally signed by the Contractor on the Manage your education and skills funding service between:

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Contractor REGISTERED NAME AND ADDRESS

Companies House No.

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

AND

Hereinafter called  
the Contractor

Hereinafter called  
the ESFA

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## GENERAL TERMS AND CONDITIONS

It is agreed as follows.

### 1. Definitions

<b>“Agreement Date”</b>	means the date on which the Contractor accepts these terms and conditions in accordance with Clause 3.2.
<b>“Appendix 1”</b>	means the information at Appendix 1 of this Contract which constitutes the summary of the ESFA funding, the value of the funding provision for specified periods, and the monthly breakdown value of the detailed funding provision.
<b>“Apprentice”</b>	means any apprentice to whom the Contractor is required to deliver any of the Services.
<b>“Apprenticeship”</b>	means the training and (where applicable) end point assessment for an employee as part of a job with an accompanying skills development programme.

<b>“Background Intellectual Property”</b>	means any Intellectual Property, other than Foreground Intellectual Property, which is used in performing the Services or comprises part of the Work.
<b>“Child”</b>	means a person under the age of 18.
<b>“Combined Authority”</b>	means an authority established under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009 or an authority to which a delegation of the Secretary of State’s functions has been made under section 39A of the Greater London Authority Act 1999.
<b>“Confidential Information”</b>	means any information, including Personal Data as defined by the Data Protection Laws, and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Parties including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential").
<b>“Contract”</b>	means the Contract between the above named parties consisting of these Terms and Conditions, the specification and any other documents (or parts thereof) specified in the Contract and any variations to the Contract agreed in writing and signed by both Parties.
<b>“Contractor Personnel”</b>	means all persons employed or engaged by the Contractor together with the Contractor’s servants, agents, consultants and sub-contractors (and all persons employed by any sub-contractor together with the sub-contractor’s servants, consultants, agents, Contractor’s and sub-contractors) used in the performance of its obligations under this Contract.
<b>"Contractor Related Parties"</b>	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).
<b>"Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer"</b>	take the meaning given in the GDPR.
<b>“Crown Body”</b>	means any department, office or agency of the Crown, including Ofsted, the Care Quality Commission, the Charity

	Commission, the Office for Students, any and all Local Authority or Combined Authority bodies.
<b>“Data Loss Event”</b>	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.
<b>“DPA 2018”</b>	Data Protection Act 2018.
<b>“Data Protection Impact Assessment”</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>“Data Protection Laws”</b>	means the Data Protection Act 2018 and Electronic Communications (EC Directive) Regulations 2003 and any other data protection laws and regulations applicable in the UK (or in any relevant part thereof), including the General Data Protection Regulation (EU) 2016/679 or similar and any codes of practice, guidelines and recommendations issued by the Information Commissioner, any replacement body or other relevant supervisory authority, all of which are current at the time of any Data processing by the Service Provider (and in the event of any conflict between the Data Protection Laws and Law, Data Protection Laws shall take precedence).
<b>“Data Protection Legislation”</b>	(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.
<b>“Data Subject Request”</b>	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.
<b>“Declaration of Sub-contractors”</b>	the declaration that the ESFA requires a Contractor complete specifying whether or not the Contractor is sub-contracting any of the Services and if so, what Services and the amount of funding that represents
<b>“Department”</b>	means the Department for Education which incorporates its Executive Agency, the ESFA.
<b>“Disclosure and Barring Service”</b>	means the non-departmental public body established pursuant to the Protection of Freedoms Act 2012.

<b>“ESF Funding Rules”</b>	means the document with which the Contractor must comply in respect of applying European Social Funding regulations to this apprenticeships provision as set out at; <a href="https://www.gov.uk/government/publications/esf-funding-rules">https://www.gov.uk/government/publications/esf-funding-rules</a> and as maybe updated from time to time.
<b>“ESFA Data”</b>	means any data (including metadata), record, document or information howsoever stored which is either:  (a) communicated by the ESFA, its staff, sub-contractors and agents to the Contractor in writing, orally, electronically or by any other means relating to the Apprentices and/or Services provided to the Apprentices; or  (b) is obtained, gleaned, compiled or processed by the Contractor during the course of the Contractor providing the Services relating to or provided to the Apprentices including but not limited to ILR Data and e-portfolios;
<b>“Evidence Packs”</b>	means any information relating to an Apprentice generated by the Contractor, the Apprentice or a third party for the purpose of the delivery of the Apprenticeship.
<b>“Exempt Information”</b>	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).
<b>“Expiry Date”</b>	means 31 March 2021 or such later date as is notified in writing by the ESFA in accordance with Clause 2.5.
<b>“FOIA”</b>	means the Freedom of Information Act 2000 and all regulations made there 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 Clause 7 (Freedom of Information and Confidentiality).
<b>“FOIA Notice”</b>	means a decision notice, enforcement notice and/or an information notice.
<b>“Foreground Intellectual Property”</b>	means any Intellectual Property that arises or is obtained or developed by, or on behalf of, the Contractor in respect of the Work in the course of or in connection with the provision of the Services excluding Apprentice Files.
<b>“Funding Rules”</b>	means the documents which set out the detailed requirements with which the Contractor must comply in

	<p>respect of each Apprenticeship delivered under this Contract as may be amended by the ESFA from time to time; as follows.</p> <p>Non-levy apprenticeships</p> <p><a href="https://www.gov.uk/guidance/apprenticeship-funding-rules">https://www.gov.uk/guidance/apprenticeship-funding-rules</a></p>
<b>"Funds"</b>	means the monies paid by the ESFA to the Contractor pursuant to this Contract and "Funding" shall have the same meaning.
<b>"GDPR"</b>	the General Data Protection Regulation (Regulation (EU) 2016/679).
<b>"High Needs Apprentice"</b>	means an Apprentice aged 16 to 18, or any young person aged 19 to 25 subject to an Education Health and Care Plan, who requires additional support.
<b>"ILR Data"</b>	means individualised apprentice record data;
<b>"Indirect Losses"</b>	means loss of profits, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;
<b>"Initial Contract Period"</b>	means the period from the Service Commencement Date to 31 March 2019, or such later date as maybe notified by the ESFA.
<b>"Inspectorates"</b>	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), the Quality Assurance Agency for Higher Education, the Office for Students (OfS), and the Care Quality Commission (CQC).
<b>"Intellectual Property"</b>	<p>means any patent, registered design, copyright, database right, design right, topography right, trade mark, trade name, application to register any of the aforementioned rights, trade secret, inventions, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world including, without limitation:</p> <p>(a) any renewals, revisions and extensions created or provided by the laws of any country;</p> <p>(b) all rights of action and remedies (including but not limited to an injunction, damages and/or an account of profits) in relation to past infringements; and</p>



	(c) the right to apply for registration of any such rights in any country of the world.
<b>"Law"</b>	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.
<b>"LED"</b>	Law Enforcement Directive (Directive (EU) 2016/680).
<b>"Minor Breach"</b>	means a delay or non-performance by either Party, including any Contractor-Related Parties of its obligations under the Contract which does not materially, adversely or substantially affect the performance or delivery of the Service or the provision of a safe, healthy and supportive learning environment.
<b>"New Register of Apprenticeship Training Providers"</b>	means the new register maintained by the ESFA of organisations qualified to receive Funding from the ESFA to deliver Apprenticeships, in operation from 12 December 2018 as detailed in <a href="https://www.gov.uk/guidance/register-of-apprenticeship-training-providers">https://www.gov.uk/guidance/register-of-apprenticeship-training-providers</a> published on GOV.UK on 15 May 2019.
<b>"Offender Manager"</b>	means an officer from the National Offender Management Service who is working directly with an offender serving their sentence in the community.
<b>"Ofsted"</b>	means the Office for Standards in Education, Children's services and Skills.
<b>"Office for Students" or "OfS"</b>	means the government-approved regulatory and competition authority for the higher education sector in England from 1 April 2018
<b>"OfS Apprenticeship Review Visit"</b>	Means "Apprenticeship Review Visits (ARVs) for Training Providers delivering Apprenticeships at Level 6 and above that are not registered with the OfS" as updated from time to time in due course.
<b>"Parties"</b>	means the ESFA acting on behalf of the Crown and the Contractor.
<b>"Premises"</b>	means the location where the Services are to be performed, as detailed in the Contract.

<b>“Processor Personnel“</b>	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.
<b>“Protective Measures“</b>	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.
<b>“Readiness Activites”</b>	means activities that the ESFA may reasonably require the Contractor to undertake between the Agreement Date and the Service Commencement Date which may include, but are not limited to training webinars,
<b>“Register of Apprenticeship Training Providers”</b>	means the register maintained by the ESFA of organisations qualified to receive Funding from the ESFA to deliver Apprenticeships from 1 May 2017.
<b>“Register of Training Organisations”</b>	means the register maintained by the ESFA of organisations qualified to receive Funding from the ESFA, other than for Apprenticeships from 1 <sup>st</sup> May 2017.
<b>“Regulated Qualification Framework” or “RQF”</b>	a system for cataloguing all qualifications regulated by Ofqual.
<b>“Regulatory Body”</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate or investigate the matters dealt with in this Contract or any other affairs of the Contractor or the ESFA, including, without limitation Ofsted.
<b>“Restricted Share Transfer”</b>	any transfer of shares or ownership in the Contractor or its holding company or in the senior management (including shadow directors) of the Contractor or its holding company to a person who had a significant influence as a director and/or a shareholder over another contractor and in respect of which within the last three years the ESFA has terminated one or more contract for similar Services as are being delivered under this Contract or the ESFA would have

	terminated the Contract had the contractor not pre-emptively terminated the relevant contract;
<b>“Serious Breach”</b>	<p>means</p> <p>(a) any breach defined as a Serious Breach in the Contract in accordance with Clauses 9.3, 9.4, 9.8, 9.9, 9.17, 12.8, 13.10, 17.8, 17.9, 23.3, and 27.5 and/or</p> <p>(b) any breach or breaches which adversely, materially or substantially affect the performance or delivery of the Services in part or in full, or the provisions of a safe, healthy and supportive learning environment. Serious breach includes but is not limited to:</p> <p>(i) a breach of security that adversely affects the Personal Data or privacy of an individual; and</p> <p>(ii) failure to comply with Law, or acts or omissions by the Contractor that endanger the health or safety of Apprentices</p>
<b>“Service Commencement Date”</b>	means the date on which the delivery of the Services commences, which shall be 1 January 2018, or such later date as is notified by the ESFA.
<b>“Services”</b>	means the services to be provided as set out in the Funding Rules and the Specification.
<b>“Specification”</b>	means the documents setting out the ESFA’s requirements for the Services to be provided under this Contract.
<b>Sub-processor</b>	any third Party appointed to process Personal Data on behalf of that Processor related to this Contract.
<b>“Successor Contractor”</b>	means the person nominated by the ESFA to undertake the services substantially the same as the Services after the termination of this Contract;
<b>“Termination Date”</b>	means any date on which this Contract terminates in accordance with Clause 24 (Termination).
<b>“Work”</b>	means all materials created by the Contractor as a result of the provision of the Services including Confidential Information.
<b>“Working Day”</b>	a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

## **2. Commencement and Continuation**

- 2.1. The Contract will come into force on the Agreement Date.
- 2.2. The delivery of the Services shall commence on the Service Commencement Date.
- 2.3. Between the Agreement Date and the Service Commencement Date, the ESFA may require the Contractor to undertake Readiness Activities. Failure of the Contractor to undertake any such Readiness Activities shall constitute a Minor Breach of this Contract.
- 2.4. Subject to Clause 2.5 the Contract shall expire on the Expiry Date, or in the event of earlier termination the Termination Date.
- 2.5. The ESFA may extend the Contract on the following basis;
  - 2.5.1. On any number of occasions up to a maximum period of 12 months in order to ensure continuity of delivery of the Services, in any circumstances in which the ESFA consider this to be necessary; and/or
  - 2.5.2. For such a period or periods as may be necessary for Apprentices recruited by the Contractor, during the Initial Contract Period, to complete their Apprenticeships;

any extension under Clause 2.5.1 shall have the effect of extending the Initial Contract Period and in each case of an extension under Clause 2.5.1 and/or 2.5.2 a new Expiry Date will be agreed in writing and the definition of Expiry Date shall be updated accordingly.

### **Recruitment/Funding for New Starts**

- 2.6 Where Appendix 1 includes 16-18 Non-Levy Apprenticeships New Starts Funding and/or Adult Non-Levy Apprenticeships New Starts Funding, the Contractor may continue to recruit new Apprentices onto any Apprenticeship up to 31 October 2020. The Contractor must not recruit new Apprentices onto any Apprenticeship after 31 October 2020. The ESFA is not responsible and will not assume responsibility for any Apprentice recruited after 31 October 2020. For the avoidance of doubt, the Apprenticeship Funding in Appendix 1 must not be used to Fund Apprentices recruited after 31 October 2020.
- 2.7 Where Appendix 1 does not include 16-18 Non-Levy Apprenticeships New Starts Funding and/or Adult Non-Levy Apprenticeships New Starts Funding, the Contractor must not recruit any new Apprentices onto any Apprenticeship after 31 March 2020. The ESFA is not responsible and will not assume responsibility for any Apprentice recruited after 31 March 2020. For the avoidance of doubt, the Apprenticeship Funding in Appendix 1 must not be used to Fund Apprentices recruited after 31 March 2020.

### **3. Contract Management**

- 3.1. The ESFA and the Contractor shall each nominate a contact for the purpose of dealing with queries and issues under this Contract and advise the other of the contact details.
- 3.2. The Contractor must ensure appropriate members of staff register as users on the user role management system at IDAMS <https://logon.fasst.org.uk> to enable the Contractor to digitally sign and agree the Contract online. It is the Contractor's responsibility to maintain appropriate user roles on an on-going basis.
- 3.3. The Contractor will inform the ESFA if directors, or any other person who has powers of representation, decision or control, meet the characteristics set out in the Funding higher-risk organisations and sub-contractor document. <https://www.gov.uk/government/publications/sfa-financial-assurance-higher-risk-providers-and-subcontractors>. Failure to inform the ESFA will be a Serious Breach of the Contract.

### **4. Service Delivery**

- 4.1. The Contractor shall deliver the Services in accordance with the Funding Rules and as set in Appendix 1.
- 4.2. The detailed requirements in respect of each Apprenticeship are set out in the Funding Rules which for the avoidance of doubt form part of the terms and conditions of this Contract.
- 4.3. The Services are to be delivered in accordance with the specific requirements of the ESFA, the Contractor's completed Specification Questionnaire from its tender response and Appendix 1 which sets out the activity and/or scheduled payment profiles for the Services agreed by the Parties, which all form part of the terms and conditions of the Contract.
- 4.4. The Contractor must complete the Apprentice's qualification on or before the planned end date in the data submitted in the ILR. Where the Contractor misses this date, the ESFA may consider this a Minor Breach of the Contract.

### **5. Assignment and Sub-contracting**

- 5.1. The ESFA reserves the right to require the Contractor not to enter into, or to terminate, any sub-contract to deliver the Services under this Contract.
- 5.2. Where the Contractor sub-contracts or intends to sub-contract any duties or obligations arising out of this Contract, the Contractor must provide the ESFA with details of all sub-contractors biannually by fully and accurately completing the Declaration of sub-contractors form in accordance with the deadline set out

in the Funding Rules. If the Contractor is not sub-contracting then a nil return must be received by the deadline date. The Contractor must notify the ESFA of any within year changes to its sub-contractors that take place between the submission dates of the Declaration of Sub-contractors forms.

- 5.3. The Contractor must comply with the requirements on sub-contracting delivery of the Services set out in Funding Rules. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to him under the Contract or these conditions. The Contractor is responsible for all the actions of its sub-contractors connected to or arising out of the delivery of the Services which it sub-contracts.
- 5.4. Services under this Contract may only be sub-contracted to one level.
- 5.5. Where the Contractor has sub-contracted any duties or obligations arising out of this Contract, the Contractor shall ensure that there is in place a legally binding sub-contract and 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 Contract, the Contractor shall ensure that the sub-contract includes any terms specified in the Funding Rules.
- 5.6. The Contractor shall ensure that any sub-contract entered into for the purpose of delivering the Services under this Contract contains a term providing that the ESFA has the right to enforce the terms of the sub-contract.
- 5.7. The Contractor shall ensure that sub-contractors are selected fairly and have sufficient capacity, capability, quality and financial standing to deliver the Services.
- 5.8. The Contractor shall make payment to any sub-contractor within 30 days of receiving a valid claim for payment and ensure that any sub-contract entered into for the purpose of delivering the Services under this Contract contains a term giving effect to this requirement.
- 5.9. The Contractor may not assign any rights, duties or obligations under this Contract without the consent of the ESFA.
- 5.10. Unless specifically authorised in writing by the ESFA, the Contractor may only sub-contract the Services to one level. For the avoidance of doubt the sub-contractor will not further sub-contract the Services that have been sub-contracted to it. This is to ensure that the Contractor retains clear and transparent control of the quality of training provision, and that proper and appropriate measures are in place to manage the apprentice experience.
- 5.11. The Contractor will manage and monitor its sub-contractors in accordance with the relevant sub-contract to ensure that the sub-contractors deliver the sub-contracted Services to the standard set out in Clause 4 (Service Delivery) of this Contract.

- 5.12. Where a sub-contract expires or is terminated for whatever reason, the Contractor will make sure that there is continuity of Services for existing Apprentices.
- 5.13. The Contractor must consider the criteria set out in the Funding Higher-risk Organisations and sub-contractors document which is published on the ESFA's website <https://www.gov.uk/government/publications/sfa-financial-assurance-higher-risk-providers-and-subcontractors>. The Contractor will have both the process it has followed for selecting and appointing sub-contractor(s) available for inspection by the ESFA. This process will consider non-financial as well as financial issues.

## **6. Change in Control**

- 6.1. The Contractor represents and warrants to the ESFA that at the Agreement Date the legal and beneficial ownership of the Contractor is as set out in any tender information or register information supplied by the Contractor and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor.
- 6.2. The Contractor will inform the ESFA in writing if there is a change in its name at least one month prior to the change taking effect unless to do would put the Contractor in breach of the Law. If that is the case the Contractor will inform the ESFA of the change in name within 10 Working Days of it becoming lawful to do so.
- 6.3. The Contractor will inform the ESFA as soon as reasonably practicable and, in any event 12 weeks before, any Change in Control of the Contractor unless to do would put the Contractor in breach of the Law. If that is the case the Contractor will inform the ESFA of the Change in Control within 10 Working Days of it becoming lawful to do so.
- 6.4. For the avoidance of doubt if there is a change in ownership in the Contractor, this will be considered under Regulation 72 of the Public Contracts Regulations 2015 as it could potentially constitute a contract modification. The ESFA will, upon receipt of a notification under Clause 6.3 consider if the requested change is permissible under Regulation 72 of the Public Contracts Regulations 2015. The ESFA may terminate this Contract under Clause 24.2.4 where the change is not permissible.
- 6.5. The ESFA may, at any time, request that the Contractor informs them of details of any Change in Control and the Contractor will comply with such a request as

soon as reasonably practicable and in any event within twenty (20) Working Days of receipt of the ESFA's request.

- 6.6. The ESFA will consider any Change in Control in the context of all available information including that provided by the Contractor. The ESFA will consider the criteria set out in the Funding higher-risk organisations and sub-contractors document which is published on the ESFA's website <https://www.gov.uk/government/publications/sfa-financial-assurance-higher-risk-providers-and-subcontractors>.
- 6.7. If the Change in Control or change in name breaches this Contract or any policies referred to in this Contract, the ESFA reserves the right to take action against the Contractor in accordance with Clauses 23 (Breach) and 24 (Termination) of this Contract.
- 6.8. If there is a Restricted Share Transfer of the Contractor:
  - 6.8.1. the Contractor will give the ESFA notice of such Restricted Share Transfer;
  - 6.8.2. the ESFA reserves the right to take whatever actions it deems necessary; and
  - 6.8.3. the ESFA may terminate this Contract under Clause 24.2.5 (Termination) within three (3) months of the Restricted Share Transfer taking place.

## **7. Freedom of Information and Confidentiality**

### **7.1. Freedom of Information**

- 7.1.1. 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.
- 7.1.2. The Contractor acknowledges and agrees that the ESFA is required by law to consider each and every request made under FOIA for information.
- 7.1.3. The Contractor acknowledges and agrees that all decisions made by the ESFA pursuant to a request under FOIA are solely a matter for and at the discretion of the ESFA.
- 7.1.4. 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:

- a) confirm or deny that information is held by the ESFA;
- or
- b) 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 7.1.

7.1.5. In relation to information relating to the Contractor or the 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:

- a) assessing the application of any exemption under FOIA; and/or
- b) responding to any FOIA notice; and/or
- c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure

where such costs are incurred pursuant to efforts by the ESFA to withhold Exempt Information.

7.1.6. The ESFA 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.

7.1.7. The Contractor shall assist the ESFA as reasonably necessary to enable the ESFA to comply with its obligations under FOIA.

## 7.2. Confidentiality

The Contractor hereby warrants that:

7.2.1. any person employed or engaged by it (in connection with this Contract in the course of such 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

7.2.2. any person employed or engaged by it (in connection with this Contract in the course of such 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.

- 7.3. The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the ESFA is treated as confidential and not disclosed (without prior approval) or used other than for the purposes of this Contract by any of its employees, servants, agents or sub-contractors.
- 7.4. The provisions of Clauses 7.2 and 7.3 shall not apply to any information:
  - 7.4.1 which is or becomes public knowledge (other than by breach of Clauses 7.2 and 7.3);
  - 7.4.2 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
  - 7.4.3 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.
- 7.5. Nothing in this Clause 7 shall be deemed or construed to prevent the ESFA from disclosing any Confidential Information obtained from the Contractor:
  - 7.5.1 to any other Crown Body;
  - 7.5.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 7.5.3 to any professional adviser, 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;
  - 7.5.4 on a confidential basis to any proposed successor body in connection with any assignment disposal of its rights, obligations or liabilities under this Contract.
- 7.6. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the course of the Services, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 7.7. The Contractor must immediately notify the ESFA of any breach of security in relation to Confidential Information and all data obtained in the course of the Services and must keep a record of such breaches. The Contractor must use its best endeavours to recover such Confidential Information or data however it

may be recorded. The Contractor must 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 or data.

- 7.8. The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the ESFA's request if the ESFA reasonably believes the Contractor has failed to comply with Clause 7.6.
- 7.9. The ESFA reserves the right to publish details of this Contract and the payments made under it to comply with the Government's transparency requirements.
- 7.10. The provisions of this Clause 7 will apply for the duration of the Contract and after its termination.

## **8. Equality of Opportunity**

- 8.1. The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination in employment or the provision of services. The Contractor shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract. The Contractor must comply with the detailed requirements in relation to equality of opportunity set out in Clauses 8.2 to 8.4.
- 8.2. The Contractor will, in delivering the Services under this Contract, demonstrate that it has had regard to the duties placed on the ESFA and the Contractor by the Equality Act 2010. The Contractor must take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed to deliver the Services.
- 8.3. The Contractor shall ensure that equality of opportunity is built into all aspects of Services; the business planning process; and the self-assessment process. The Contractor shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The Contractor shall use appropriate, specific and measurable objectives. These will be proportionate, relevant and aligned to the Services the Contractor is funded to deliver.
- 8.4. The ESFA may use a variety of equality information and data to support judgements about quality and eligibility for funding. These may include, but are not limited to: inspection judgements for equality and diversity, judgements from the Equality and Human Rights Commission, and the success and participation rates of different groups of Apprentices.

## **9. Apprentice Health, Safety & Welfare**

- 9.1. The Contractor shall ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of Apprentices. The Contractor shall provide information to the ESFA, as and when specifically requested, to give assurance that adequate arrangements exist for Apprentice Health, Safety and Welfare.
- 9.2. Where part of the learning takes place in an environment outside the direct control of the Contractor, the Contractor shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of Apprentices.
- 9.3. The Contractor shall make arrangements for ensuring that the Provision is provided with a view to safeguarding and promoting the welfare of children receiving education or training at the institution or under the auspices of the Contractor in an environment outside the direct control of the Contractor. 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.
- 9.4. The Contractor shall make arrangements for ensuring that the Provision is provided with a view to safeguarding and promoting the welfare of High Needs Apprentices aged 18 to 25 receiving education or training at their institution or under the auspices of the Contractor in an environment outside the direct control of the Contractor. This must include the adoption of safer recruitment procedures. In doing so, the Contractor shall make those arrangements as if such Apprentices were children and must 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 Apprentices 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 Contract.
- 9.5. The Contractor must carry out appropriate disclosure and barring service checks on all overseas applicants for employment where such applicants would be employed to work in regulated activity relating to children or vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) if successful, and must seek additional information about an applicant's conduct.
- 9.6. In working with other organisations/bodies, the Contractor shall make arrangements to co-ordinate and co-operate effectively for reasons of

Apprentice health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding

- 9.7. 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
- 9.8. 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 have regard to statutory guidance issued under section 29 of the Counter-Terrorism and Security Act 2015. Failure to do so may constitute a Serious Breach of this Contract.
- 9.9. In providing the Services, the Contractor 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). Failure to do so may constitute a Serious Breach of this Contract.
- 9.10. Where the Contractor or one of the Contractor Related Parties:
  - 9.10.1. is aware of an incident, or pattern of incidents, which undermines the promotion of British fundamental values as referred to in Clause 9.7 or the ability of the Contractor or the Contractor Related Parties to comply with the Prevent duty, or
  - 9.10.2. makes a referral of an individual member of Contractor Personnel for the purposes of determining whether that member of Contractor Personnel 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,
  - 9.10.3. the Contractor will ensure it notifies the ESFA via the Contact Form: General Enquires at <https://www.gov.uk/government/organisations/education-and-skills-funding-agency> of that incident(s) and/or that a referral has been made.
- 9.11. 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 , or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012, to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012) in respect of any Apprentices under the age of 19 and High Needs Apprentices aged 19 to 25 (as if those Apprentices were pupils for the

purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).

- 9.12. Before employing or engaging a person to carry out teaching work in respect of any Apprentices under the age of 19 and High Needs Apprentices aged 19 to 25 (as if those Apprentices 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, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012.
- 9.13. The Contractor shall, in circumstances where it sub-contracts the management and/or delivery of the services under this Contract, ensure that all the clauses in respect of Apprentice Health, Safety and Welfare under this Clause 9 are included in its contract with sub-contractors.
- 9.14. The Contractor shall inform the ESFA of the death of any Apprentice which is a result of work undertaken whilst in employment and who is undertaking a related Learning Programme. This shall be done by informing the ESFA's representative by telephone or email immediately upon the Contractor becoming aware of the event
- 9.15. The Contractor shall report all RIDDOR reportable incidents in line with the Regulations, and shall investigate or assess the circumstances of all Apprentice incidents within the scope of RIDDOR and follow HSE guidance 'Investigating accidents and incidents: A workbook for employers, unions, safety representatives and safety professionals' (HSG245) ISBN 0717628272. the Contractor shall only use persons competent to investigate/assess Apprentice incidents with a view to identifying the causes of any incident and lessons to be learned.
- 9.16. The Contractor shall also monitor, and act on, any other harm to Apprentices to the extent that the Contractor could reasonably be expected to do so and/or where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) incidents that cause absence from learning, any loss to the Apprentice of any physical or mental faculty or any disfigurement and incidents of bullying and harassment.
- 9.17. The Contractor shall co-operate with the ESFA and Department for Work and Pensions for the purposes of the Industrial Injuries Disablement Benefit (IIDB) in respect to those Apprentices to which it applies.
- 9.18. 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.

9.19. Where the Contractor or one of its sub-contractors refer:

- (a) a safeguarding concern related to sexual violence to Local Authority children's social care/adult social care and/or the police, or
- (b) an allegation of abuse made against a teacher or other member of staff to the designated officer(s) (at the local authority),

The Contractor must, as soon as practicable, inform the ESFA via the Contact Form: General Enquires at

<https://www.gov.uk/government/organisations/education-and-skills-funding-agency>. Such notification must include the name of the institution, a high level summary of the nature of the incident (without sharing personal information about victims or alleged perpetrators) and confirmation of whether it is, or is scheduled to be, investigated by the Local Authority and/or the police.

9.20. In so far as permitted by Law, where the Contractor has made a referral or provided information to the Disclosure and Barring Service in compliance with any duties of the Body under the Safeguarding Vulnerable Groups Act 2006, the Contractor shall ensure that it informs the ESFA via the Contact Form: General Enquires at <https://www.gov.uk/government/organisations/education-and-skills-funding-agency> that a referral has been made / information has been provided.

## **10. Liability**

- 10.1. Neither Party limits its liability for death or personal injury cause by the negligence of itself of any of its servants, employees to agents acting in the course of their employment or in respect of misrepresentations made fraudulently in respect of any breach of an implied terms in respect of title to goods.
- 10.2. Subject to Clause 10.4 the Contractor shall indemnify and keep indemnified the ESFA, their 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 ESFA, their 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 willful default of the Contractor, their servants or agents in the delivery of the Service except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or willful default of the ESFA or their servants or agents.
- 10.3. The Contractor warrants to the ESFA 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 copyright or any other intellectual property right of any person and agrees to indemnify the ESFA 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 an act is, or is alleged to be, an infringement of a third party's copyright or other intellectual property right. This warranty and indemnity shall survive the termination of the Contract and shall exist for the life of the copyright or other intellectual property right.

- 10.4. The Contractor's liability under Clause 10.2 shall be limited as follows;
- 10.5. In accordance with Clause 10.1 it shall be unlimited;
- 10.6. Otherwise it shall not exceed twice the value of the Contract or £1,000,000 (one million pounds), whichever is the greater.
- 10.7. Notwithstanding anything to the contrary contained in the Contract, the ESFA's liability whether arising from breach of contract tort including negligence breach of statutory duty or otherwise shall be limited as follows;
- 10.8. In accordance with Clause 10.1 it shall be unlimited;
- 10.9. In respect of all other liability falling outside of Clause 10.1 arising out of or in connection with its obligations (other than its obligation to pay for the Services) under this Contract and all actions claims demands proceedings costs and expense arising in respect of it to to a maximum aggregate value of £100,000 (one hundred thousand pounds) This maximum liability limit shall apply to the whole of the period of the contact term and all claims made within the contract term being the Initial Contract Period and any extension of it in accordance with Clause 2 (Commencement and Continuation), and any and all claims made within that period.
- 10.10. The ESFA shall not be liable to the Contractor for any Indirect Losses.
- 10.11. The ESFA reserves the right to require the Contractor to secure the provision of an appropriate guarantee in respect of the Contractor's liabilities under this Contract.

## **11. Insurance**

- 11.1. 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 act or default for which it may become liable to indemnify the ESFA under this Contract. The ESFA reserves the right to require the Contractor to insure against any act or default which arises as a result of fraud or other criminal activity by the Contractor, its employees, agents or sub-contractors. 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.



## **12. Access and Monitoring**

- 12.1. When appropriate 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.
- 12.2. For monitoring and evaluation purposes, the ESFA or their representatives, the Secretary of State or their representatives, the National Audit Office, Representatives of the European Commission and the European Court of Auditors, the Inspectorates and HM Treasury shall have the right to visit all or any site(s) and view operations relating to the provision and to inspect relevant documents and interview Apprentices and the Contractor's staff during these visits in order to:
  - 12.2.1. 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;
  - 12.2.2. 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 Apprentices, during these visits at any reasonable time
  - 12.2.3. carry out examinations into the economy, efficiency and effectiveness with which the Contractor has used the ESFA's resources in the performance of the Contract.
- 12.3. The Contractor shall, if required by any of the representatives stated at Clause 12.2 provide appropriate oral or written explanations.
- 12.4. The ESFA reserves the right, at any reasonable time, and as it may deem necessary to require the Contractor at its own cost to:
  - 12.4.1. provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform the Contract;
  - 12.4.2. provide such assurance as the ESFA may require that the delivery of the Services complies with the requirements of the Contract;
  - 12.4.3. obtain a report by an independent accountant of the ESFA's choice on;
    - 12.4.3.1. the financial systems and controls operated by the Contractor or its sub-contractors;
    - 12.4.3.2. the accuracy and regularity of funding claims in respect of payments claimed or received under the Contract;

- 12.4.3.3. the evidence held by the Contractor or its sub-contractors to support delivery of the Services in accordance with the terms of 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.

- 12.4.4 provide a copy of The Contractor's latest audited Accounts and submit further copies of the audited Accounts as they become available;
  - 12.4.5 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the ESFA;
  - 12.4.6 provide any additional evidence to support payments made under this Contract, as the ESFA shall reasonably require.
- 12.5. The Contractor shall in performing the Services comply fully with all relevant rules and regulations of the ESFA in force from time to time especially when on the ESFA's premises.
  - 12.6. 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 fulfil requirements to provide information to the Secretary of State, to account to Parliament and to meet European funding requirements. On occasion, the ESFA will require urgent information from the Contractor
  - 12.7. The Contractor shall provide the ESFA or agents acting on its behalf with the information it requires under Clause 12.6 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.
  - 12.8. Failure to comply with any request for information under Clause 12.6, at all or in the required timescales, will constitute a Minor / Serious Breach of this Contract.
  - 12.9. Where the ESFA has undertaken an investigation or received a report from an independent accountant (the cost of which may be recharged to the Contractor) or otherwise, in relation to the Contractor, it may, as a consequence of that

investigation or report, impose additional conditions of funding upon the Contractor.

- 12.10. The ESFA, (in accordance with <https://www.gov.uk/government/publications/post-16-audit-code-of-practice>), the European Commission, the European Court of Auditors and/or a Crown Body may at any time conduct audits.
- 12.11. The Parties agree that they will bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clause 12.10, unless the audit identifies a material breach or malpractice by the Contractor and/or a Contractor Related Party in which case the Contractor will reimburse the ESFA for all the ESFA's reasonable costs incurred in the course of the audit.
- 12.12. If the findings of an audit conducted pursuant to this Clause 12 results in the requirement for ILR data to be corrected and re-submitted the Contractor will re-submit the data to the ESFA, as set out in Clause 17 (Submission of Apprentice Data), within two months. Failure to do so will be a Minor Breach of this Contract.
- 12.13. The Contractor must comply with any additional conditions of funding imposed under Clause 12.9.
- 12.14. Where the Contractor fails to comply with the conditions of funding imposed under Clause 12.9, 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 23 (Breach).
- 12.15. If the ESFA assesses that the Contractor has failed to comply with any additional conditions of funding imposed under Clause 12.9 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 Clauses 23.2 to 23.3 (Minor Breach) or Clauses 23.4 to 23.6 (Serious Breach).

### **13 Funding and Payment**

- 13.1 Subject to Clause 13.2 and in consideration of the Contractor delivering the Services in accordance with Clause 4 (Service Delivery), the ESFA agrees to pay the Contractor the amounts set out in Appendix 1 ("the Contractor's Allocation") and such payments are to be made in accordance with the Funding Rules, on condition that the Contractor delivers the Services in accordance with the terms and conditions of the Contract.
- 13.2 Payment will not be made in accordance with Clause 4 (Service Delivery) where the ESFA has reasonably concluded that the Contractor is at serious risk of failure to deliver the Services following a review of the quality of the Services by the ESFA.

- 13.3 In the event that the Contractor exceeds its Contractor's Allocation without the prior express authorisation of the ESFA it does so at its own risk. There is no obligation on the ESFA to make any payment in excess of the Contractor's Allocation unless this has been specifically authorised by the ESFA in accordance with Clauses 13.4, 13.6 or otherwise.
- 13.4 The Contractor's Allocation may be varied by the ESFA in accordance with the Funding Rules. Any such variation may result in a reduction or an increase in the Contractor's Allocation, in accordance with the Funding Rules. Any such variation will take effect only when notified by the ESFA and Appendix 1 shall be updated accordingly to reflect the variation.
- 13.5 Where the ESFA identifies that the Contractor is failing to deliver the value of learning of this Contract, it reserves the right in its absolute discretion to reduce the Contractor's Allocation for that Learning Programme.
- 13.6 The ESFA restricts delivery of the Contract against the Contractor's Allocation up to Expiry Date as detailed in Appendix 1. Appendix 1 confirms the element of the Contractor's Allocation as available between the following periods;
- 13.6.1 the Service Commencement Date and 31 March 2018; and
  - 13.6.2 1 April 2018 and 31 July 2018; and
  - 13.6.3 1 August 2018 and 31 March 2019; and
  - 13.6.4 1 April 2019 and 31 March 2020; and
  - 13.6.5 1 April 2020 and the Expiry Date
- Where the Contractor's delivery between the Service Commencement Date and 31 March 2021 fails to meet the minimum levels of performance over that period, or results in the Contractor's Allocation over that period being exceeded then the ESFA reserves the right, at its absolute discretion, to vary the Contractor's Allocation accordingly.
- 13.7 In delivering the Services to Apprentices starting an Apprenticeship at any time during this Contract the ESFA reserves the right to give at least 8 weeks' notice in writing of its intention to cease funding for any new Apprentices recruited on an Apprenticeship from the date specified in the notice. The ESFA will not be liable to make payments in respect of any Apprentices recruited after the date specified in the notice.
- 13.8 The ESFA reserves the right to give three months' notice to reduce the Contractor's Allocation without the need to give a reason.
- 13.9 Payment by the ESFA shall be without prejudice to any claims or rights, which

the ESFA may have against the Contractor and shall not constitute any admission by the ESFA as to the performance by the Contractor of its obligations hereunder. Prior to any such payment, the ESFA 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 ESFA.

- 13.10 Where the ESFA carries out a review, investigation 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, The ESFA reserves the right at its absolute discretion to require the Contractor to, or the ESFA may (itself or via a third party) at the Contractor's cost, carry out 100% audit of all or part of the Services and/or to recover from the Contractor an amount based on the error rate identified and the total value of the Contract. Such amounts may be recovered by making adjustments to data submitted by the Contractor under the Contract, or by raising an invoice for payment by the Contractor, or making deductions from future payments due to the Contractor under the Contract. Failure to settle such amounts by the Contractor will constitute a Serious Breach under Clause 23 (Breach) of the Contract. The decision of the ESFA as to the amount of recovery under this clause is final.
- 13.11 Where the ESFA, in accordance with Clause 13.10, identifies errors it may at its discretion review the controls and processes to gain assurance the errors will not occur again. Where further assurance work is required this will be at the Contractor's cost (or the ESFA will procure and recharge to the Contractor at its sole discretion). Where a full finding audit results in a "qualified" rating this will constitute a Minor Breach.
- 13.12 The ESFA may implement a reduction in funding as set out in the Funding Rules through a notification and not a variation pursuant to Clause 43 (Entire Contract/Amendments).
- 13.13 All payments by the ESFA will be made via BACS.
- 13.14 The ESFA is generally unable to recover any Value Added Tax charged. The maximum sum payable under this Contract, as set out in Appendix 1 includes the cost of the service and any other VAT or taxes to be charged, where they apply.
- 13.15 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 goods or services essential to that provision, is considered to be an exempt supply for VAT purposes.

## **14 Review of Contractual Performance and Reconciliation of Contracts**

- 14.1 Where the Contractor's actual delivery, as against the Contractor's Allocation, will result or has already resulted in an overpayment to The Contractor by the ESFA, the ESFA will withhold from, or deduct the amount owed from, payments due to the Contractor under the Contract for current or subsequent months or years accordingly.
- 14.2 Where the Contractor's actual delivery, as against the Contractor's Allocation, has resulted in an underpayment to the Contractor by the ESFA, the ESFA will adjust the amount due to the Contractor accordingly. This adjustment shall not exceed the Contractor's Allocation as set out in Appendix 1 of this Contract.
- 14.3 Should there be an under or over payment to the Contractor, the ESFA will consider the underlying causes for that, in accordance with the Funding Rules and, may at its absolute discretion require a Contract variation to amend the Contractor's Allocation.
- 14.4 The evidence required in respect of each Apprenticeship is set out in the Funding Rules and the Contractor must retain such evidence for inspection on demand.

## **15 Prohibited Activities**

- 15.1 The Contractor shall not offer or give, or agree to give, to any member, employee or representative of the ESFA any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with the ESFA or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The Contractor's attention is drawn to the criminal offences created by the Bribery Act 2010. Any offence by the Contractor or its employees or by anyone acting on its behalf under the Bribery Act 2010 in relation to this or any Contract with the ESFA or Her Majesty's Government 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 with any political or religious organisation using any funding provided by the ESFA under this Contract if the effect of that Contract 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 ESFA without the ESFA's permission.

## **16 Data Protection and Protection of Personal Data**

- 16.1 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 (i.e. submission of Apprentice data to the ESFA). Any other processing of Personal Data (i.e. Apprentice enrolment or delivering education & training, e.g. e-portfolios) undertaken by the Contractor will be as a Data Controller and not on behalf of the ESFA. Clauses 16.2 to 16.14 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.
- 16.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 16.3 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.
- 16.4 If requested by the ESFA's nominated contact, 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.
- 16.5 Subject to Clause 16.6, the Processor shall notify the Controller immediately if it:
  - (a) receives a Data Subject Request (or purported Data Subject Request) in relation to the processing of their data under this Contract only (submission of ILR data);
  - (b) receives a request to rectify, block or erase any Personal Data processed through the submission of ILR data. Notification in such cases should be given via the ILR for changes in-year and via the nominated contact for closed years;
  - (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.
- 16.6 The Processor's obligation to notify under Clause 16.5 shall include the provision of further information to the Controller in phases, as details become available.
- 16.7 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 16.5 (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.
- 16.8 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.
- 16.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 16.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 16.11 Before allowing any Sub-processor to process any Personal Data related to this Contract(submission of ILR data), the Processor must:
- (a) notify the Controller's nominated contact in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller's nominated contact;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 16 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.

- 16.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 16.13 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).
- 16.14 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.

## **17. Submission of Apprenticeship Data**

- 17.1 The Contractor must supply the ESFA data on each individual Apprentice, in accordance with the data collections framework set out in the 'ILR specification validation rules and appendices 2019 to 2020' as amended and updated from time to time and which are published on the ESFA's website via <https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2019-to-2020> in accordance with the 'Provider Support Manual' as amended and updated from time to time.
- 17.2 The Contractor must supply the ESFA with data in accordance with the following:
- 17.2.1 in line with agreed audit arrangements;
  - 17.2.2 in adherence with the Data Protection Laws;
  - 17.2.3 to support payments to be made;
  - 17.2.4 to enable reconciliation to take place; and
  - 17.2.5 to support the contract management and allocation processes.
- 17.3 The Contractor will report new starts within 2 months of the Apprentice starting, or within 3 months of the Apprentice finishing for all withdrawals and achievements. The Contractor will report all changes by the final collection of the Funding Year.
- 17.4 Data collected must be transmitted to the ESFA through the ESFA's web portal <https://submitlearnerdatabeta.fasst.org.uk/>. Access to the ESFA's web portal is restricted and the Contractor agrees to comply with the conditions of use regarding the supply of data to the ESFA set out in this Clause 17 and in 'Individualised Learner Record Specification 2019 to 2020 and relevant

Provider Support Manual' as amended and updated available from time to time, via <https://www.gov.uk/government/collections/individualised-learner-record-ilr>

- 17.5 Where the ESFA is concerned about the quality of the data, including the completeness or accuracy of the data, provided by the Contractor, the ESFA may require the Contractor to supply data more frequently for such a period as the ESFA shall require, and the ESFA may audit, or instruct a third party to audit, at the Contractor's cost, the Contractor's data and controls to gain assurance that the quality improvements have been made.
- 17.6 The ESFA reserves the right to require the Contractor, at its own cost, to carry out such work as the ESFA deems necessary to improve the quality of data.
- 17.7 Without prejudice to any other provision of this Clause 17 the ESFA reserves the right to suspend payments to the Contractor under the Contract where data quality gives rise to concern about the accuracy of the data provided by the Contractor.
- 17.8 Failure to transmit complete and accurate data to the ESFA in accordance with this Clause 17 will constitute a Serious Breach of Contract in accordance with Clause 23 (Breach) of the Contract.
- 17.9 Where the Contractor is providing the Services to Apprentices claiming state benefits, it must provide data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to the Contractor. Failure to transmit complete and accurate data under this Clause 17 will constitute a Serious Breach of Contract in accordance with Clause 23 (Breach) of the Contract and may result in payments for this part of the Services to be delayed or withheld.
- 17.10 The Contractor must update the course information funded by the ESFA at [www.coursedirectoryproviderportal.org.uk](http://www.coursedirectoryproviderportal.org.uk) in accordance with the course directory data requirements which can be found at <https://coursedirectoryproviderportal.org.uk/Help>.
- 17.11 The Contractor shall register with UKRLP (<http://www.ukrlp.co.uk>) and Get Information About Schools (<https://get-information-schools.service.gov.uk/>) and maintain contact details on an on-going basis.
- 17.12 The Contractor must submit data about any member of its workforce delivering GCSE English and Maths in the format and to the timescales as required by the ESFA.
- 17.13 The ESFA will monitor and review the data submitted under this Clause 17 (Submission of Apprentice Data) of this Contract to ensure that payments are made in accordance with the requirements set out in "Financial Assurance: Monitoring the funding rules for apprenticeships and adult skills"

- 17.14 The ESFA will publish monitoring reports on <https://submitlearnerdatabeta.fasst.org.uk/>. The Contractor must access the monitoring reports every month and amend any errors for the next submission by taking the actions specified in the report user guide. Failure to amend the data as required will constitute a Minor Breach of Contract in accordance with Clause 23 (Breach) of the Contract.
- 17.15 If served with notice of a breach, the Contractor must correct data or supply the ESFA with evidence within the period specified in the notice. This evidence can include digital copies of documents such as Apprentice files, commitment statements or employer declarations. Annotated spreadsheets or notes are not acceptable as evidence.
- 17.16 Where data is incorrect in the final data submission of the academic year the ESFA will recover the payments associated with the incorrect data.
- 17.17 Without prejudice to the ESFA's rights under Clauses 23 (Breach) and 24 (Termination) and to any other express rights under this Contract, where the Contractor has been found to be fraudulent or have recklessly submitted erroneous reports, claims and/or Apprentice data (including Evidence Packs), or the ESFA reasonably believes such reports to be fraudulent or erroneous the ESFA may, by notice to the Contractor, increase the level of its monitoring of the Contractor, or (at the ESFA's option), of the Contractor's monitoring of its own performance of its obligations under this Contract in respect of the relevant Services the subject of such fraudulent, erroneous or misleading reporting until such time as the Contractor will have demonstrated to the reasonable satisfaction of the ESFA that it will perform (and is capable of performing) its obligations under this Contract, in which case, the following provisions will apply:
- 17.17.1 any such notice to the Contractor will specify in reasonable detail the additional measures to be taken by the ESFA or by the Contractor (as the case may be) in monitoring the performance of the Contractor;
  - 17.17.2 if the Contractor (acting reasonably) objects to any of the specified measures on the grounds that they are excessive it will notify the ESFA in writing within five (5) Working Days of the receipt of the notice of the measures objected to (and of any Changes necessary in order to prevent prejudice to the Contractor's performance of its obligations under this Contract);
  - 17.17.3 the measures to be taken by the ESFA and the Contractor (as the case may be) will be agreed between the Parties or, in the absence of agreement within ten (10) Working Days of the ESFA's receipt of the Contractor's objection, determined pursuant to Clause 35 (Dispute Resolution); and

- 17.17.4 the Contractor will bear its own costs and indemnify and keep the ESFA indemnified at all times from and against all costs and expenses reasonably and properly incurred by or on behalf of the ESFA in relation to such increased level of monitoring save where there is no evidence that the Contractor has been found to have been fraudulent or to have submitted erroneous reports and the Contractor has been exonerated.

## **18 Quality Assurance and Raising Standards**

- 18.1 The Contractor undertakes to the ESFA that it has the resources and skills necessary to carry out the Contractor's obligations pursuant to this Contract.
- 18.2 The Contractor shall comply with the Funding Rules published by the ESFA as amended from time to time and any other requirements, which may from time to time be issued by the ESFA, Ofsted, the awarding organisations and other regulatory bodies and of which the Contractor is made aware.
- 18.3 The Contractor shall ensure that all activities carried out pursuant to this Contract shall be documented in accordance with the requirements of the ESFA and shall provide such documentation to them as the ESFA shall request from time to time.
- 18.4 The Contractor shall continuously seek to improve the Services and raise standards to benefit the Apprentice. The Contractor shall have the primary responsibility for improving standards and will need to demonstrate to The ESFA satisfaction that it has an effective quality assurance system based on the implementation of its own quality improvement process. The ESFA reserves the right to require the Contractor to provide the ESFA or Ofsted evidence to support the quality improvement processes.
- 18.5 The Contractor shall use all reasonable endeavours to:
- 18.5.1 minimise dropout rates and deliver high completion and achievement rates and appropriate progression;
  - 18.5.2 meet the minimum quality standards published by the ESFA and/or the ESFA that apply to the appropriate Services purchased;
  - 18.5.3 ensure competent and appropriately qualified staff deliver and assess learning. The Contractor shall be responsible for the continuing professional development and training of its staff;
  - 18.5.4 offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
  - 18.5.5 provide a safe, healthy and supportive environment, which meets the needs of Apprentices;

- 18.5.6 provide good management and leadership of the learning process;
  - 18.5.7 deliver value for money and financial probity; and
  - 18.5.8 ensure all sub-contractors delivering Services under the Contract on behalf of the Contractor comply with the requirements set out in 18.5.1 to 18.5.7 above.
- 18.6 The Contractor shall continuously seek to improve the Provision and raise standards to benefit the Apprentice. The Contractor shall have the primary responsibility for improving standards and will need to demonstrate to the ESFA satisfaction that it has an effective quality assurance system based on the implementation of its own quality improvement process. The ESFA reserves the right to require the Contractor to provide the ESFA or an Inspectorate evidence to support the quality improvement processes.
- 18.7 The Contractor must take all reasonable steps to meet the relevant requirements for data gathering for the FE Choices Performance Indicators as outlined currently at <https://www.gov.uk/government/collections/fe-choices-information-for-providers> and in any subsequent updates to these web pages.
- 18.8 Where appropriate, the Contractor shall confirm in writing to the ESFA that their Centre Approval Status is still current. The written statement will need to confirm approved centre status for the specific Regulated Qualification Framework (“RQF”) titles and levels, including awarding body name(s). The Contractor must notify the ESFA immediately in writing via the Contact Form: General Enquires at <https://www.gov.uk/government/organisations/education-and-skills-funding-agency> if it receives any sanction from an awarding body.
- 18.9 The ESFA may assess the quality and delivery of the Services and the Contractor’s compliance with the requirements in Clauses 18.5.1 to 18.5.8 during the term of the Contract. The Contractor will be informed of the outcome of that process. Where the ESFA assesses the Contractor to be in Serious Breach of Contract following such assessment the ESFA will issue a notice in accordance with Clause 23.5 of the Contract which may:
- 18.9.1 require the Contractor to meet improvement indicators to improve the quality of its Services. The ESFA will meet with the Contractor to discuss and reach agreement on implementation of these actions and improvement indicators and to agree arrangements for monitoring and reviewing progress. In such cases reviews will take place at the frequency specified by the ESFA and in agreement with The Contractor;
  - 18.9.2 agree detailed improvement plans and measures that set out clearly the expected timescale for improvement;

18.9.3 agree arrangements for more frequent monitoring of quality improvement plans.

### **Financial Health**

18.10 The ESFA will undertake an assessment of financial health and control (<https://www.gov.uk/government/publications/esfa-financial-health-assessment>). 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:

18.10.1 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;

18.10.2 require the Contractor to suspend the recruitment of Apprentices to the Services and/or cap any growth in Apprentice numbers;

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

18.10.4 terminate in accordance with Clause 24.2.11

18.11 Where the Contractor fails to comply with requirements imposed under Clause 18.10.1 and/or 18.10.2, the ESFA shall consider Termination under Clause 24.2.12.

18.12 Failure to submit accounts for assessment when requested will automatically deem the assessment under Clause 18.10 as 'inadequate' and Clauses 18.10.1 to 18.10.4 will apply.

18.13 Where the outcome of a financial assessment illustrates a deterioration from the previous assessment the ESFA may in its absolute discretion request such further assurance or information from the Contractor as it deems necessary.

18.14 The Contractor must notify the ESFA immediately if it, or any Contractor Related Party, is experiencing or forecasting any financial difficulties and the ESFA may ask for additional financial information to obtain assurance of continuity of delivery of the Services.

18.15 The ESFA may require the Contractor to carry out an independent business review at the Contractor's cost (or for the ESFA to procure and recharge to the Contractor at its sole discretion) if the ESFA has concerns over the financial health of the Contractor.



- 18.16 The ESFA can at any time require the Contractor at its own cost to provide a copy of the Contractor's latest accounts, any historic accounts as requested, and submit further copies of the accounts as soon as they become available and to provide, upon request:
- 18.16.1 The Contractor's up to date management accounts, including financial performance against delivery;
  - 18.16.2 financial forecasts of the Contractor's financial position for the next 12 months;
  - 18.16.3 cash flow forecasts for the next 12 months;
  - 18.16.4 any additional financial information the ESFA deems necessary
- 18.17 Where the further information required from the Contractor under Clauses 18.13, 18.15 and 18.16 does not provide adequate assurance to the ESFA then the ESFA may in its absolute discretion take one or more of the actions set out in Clauses 18.10.1 to 18.10.4.
- 18.18 The ESFA reserves the right to request that the Contractor provide a guarantee or other form of security on terms that will be notified to the Contractor.
- 18.19 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 fulfil 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.
- 18.20 The Contractor will provide the ESFA or agents acting on its behalf with the information it requires under Clause 18.19 at the times and in the formats specified. This information will be of sufficient quality to meet the purposes for which it has been requested.

### **Ofsted Monitoring visits**

- 18.21A Where the ESFA is made aware that Ofsted has assessed the Contractor as having made "insufficient progress" during their programme of new apprenticeship provider monitoring visits, the ESFA may, in its absolute discretion take the following actions:
- 18.21A.1 require the Contractor to temporarily suspend the recruitment of Apprentices
  - 18.21A.2 require the Contractor to inform all of their existing employers about the outcome of the Ofsted visit

- 18.21A.3 require the Contractor to stop working with new apprentices via a sub-contracting arrangement with another main provider or employer-provider
  - 18.21A.4 require the Contractor to inform all of their existing main providers or employer-providers about the outcome of the Ofsted visit
  - 18.21A.5 terminate this Contract in accordance with Clause 24.2.20 where Apprentices may be at immediate risk on the grounds of safeguarding issues and/or the quality of leadership and/or training provision is such that one or more Apprentice has no reasonable prospect of achieving his or her training objective.
- 18.21B Where the ESFA is made aware that Ofsted has assessed a sub-contractor to the Contractor as having made “insufficient progress” during their programme of new apprenticeship provider monitoring visits, the Contractor is required to ensure that the sub-contractor suspends the recruitment of Apprentices until further notice.

### **Ofsted Inspection**

- 18.22 When the Contractor receives notification from Ofsted that the Services are to be inspected, the Contractor shall on request provide the ESFA with details of its quality improvement activity, 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.
- 18.23 Ofsted may, at any time during the Term, undertake an inspection of the Contractor. The ESFA will consider the outcome of any such inspection as follows:

### **Inadequate in part**

- 18.23.1 Where Ofsted has assessed the Services to be inadequate in part, The ESFA may, in its absolute discretion take one or more of the following actions:
- 18.23.1.1 require the Contractor to accept and comply with additional Contract obligations relating to the improvement of the Services assessed as inadequate; and/or
  - 18.23.1.2 require the Contractor to suspend the recruitment of Apprentices to, and/or to cap any growth in, the Services which is assessed as inadequate; and/or

- 18.23.1.3 give consideration to the Services which are assessed as inadequate in its allocations when finalising the amount of Funding in any subsequent Contracts between the Parties; and/or
- 18.23.1.4 reduce, suspend or recover payment to the Contractor in respect of that part of the Services assessed as inadequate; and/or
- 18.23.1.5 terminate in accordance with Clause 24.2.14

### **Inadequate overall**

- 18.23.2 Where the ESFA is made aware that Ofsted has provisionally Assessed the Services to be inadequate overall, the ESFA may, in its absolute discretion take one or more of the following actions:
  - 18.23.2.1 require the Contractor to accept and comply with temporary additional Contract obligations relating to the improvement of the overall Services, including but not limited to, requiring the Contractor to temporarily suspend the recruitment of Apprentices and/or temporarily cap any growth in those Apprenticeships which are assessed as inadequate.
  - 18.23.2.2 commence discussions with the Contractor and the Local Authority within whose area the Contractor is located, either with Ofsted or not, as part of considering what actions as specified in Clauses 18.23.3.1 to 18.23.3.5 inclusive may be taken.
- 18.23.3 Where Ofsted has confirmed its assessment that the Services is inadequate overall, the ESFA may, in its absolute discretion take one or more of the following actions:
  - 18.23.3.1 require the Contractor to accept and comply with additional Contract obligations relating to the improvement of the overall Services; and/or
  - 18.23.3.2 require the Contractor to suspend the recruitment of Apprentices to, and/or to cap any growth in, those Apprenticeships which are assessed as inadequate; and/or
  - 18.23.3.3 give consideration to the assessment of inadequate in its allocations when finalising the amount of Funding in any subsequent Contracts between the Parties; and/or

- 18.23.3.4 reduce, suspend or recover payment to the contractor;  
and/or
- 18.23.3.5 terminate this Contract in accordance with Clause 24.2.16 (Termination).
- 18.23.4 The failure of the Contractor, as assessed by the ESFA, to comply with any requirements of Clauses 18.23.3.1 and/or 18.23.3.2 within such time as the ESFA may deem reasonable may lead to the ESFA taking such actions as it deems appropriate which may include, but is not limited to, terminating in accordance with Clause 24.2.15 (Termination).
- 18.23.5 The ESFA will take action based on Ofsted's provisional and confirmed outcomes as in Clause 18.23.2 to 18.23.3 above. Where the ESFA is made aware that the Contractor has made a complaint about the graded outcome of the overall assessment by Ofsted, the ESFA will continue to progress action under Clauses 18.23.2 to 18.23.3 but will be mindful of the implications arising from the outcome of a complaint. The ESFA will review any decisions made at such time as outcomes of any complaint are made known.

#### **OfS Apprenticeship Review Visit**

- 18.24 Where OfS has assessed the Contractor as having “not met” one or more of the assessment criteria after an OfS Apprenticeship Review visit, the ESFA may, at its absolute discretion, take one or more of the actions set out in the policy “Apprenticeship Review Visits (ARVs) for Training Providers delivering Apprenticeships at Level 6 and above that are not registered with the OfS” as updated from time to time.
- 18.25 The action that the ESFA may take in accordance with Clause 18.24 (OfS Apprenticeship Review Visit) shall include:
  - 18.25.1 Requiring the Contractor to temporarily suspend the recruitment of Apprentices;
  - 18.25.2 terminating the Contract in accordance with Clause 24.2.21 (Termination).

#### **Minimum standards**

- 18.26 The ESFA may, at any time during the Contract, undertake an assessment of the quality and delivery of the Services which may include analysis of performance against the national minimum quality standards, as published by the ESFA and/or the ESFA on GOV.UK ‘Qualification achievement rates and minimum standards’.

- 18.27 The ESFA will use data reported in the 2018 to 2019 Academic Year to measure performance against the National Minimum Standards for the 2019 Academic Year and will use this as an indicator of the quality and delivery of the Services by the Contractor.
- 18.28 Where the ESFA assesses that the Services, in whole or in part, fall below the Minimum Standards, the ESFA may, in its absolute discretion, take one or more of the following actions:
- 18.28.1 require the Contractor to, and the Contractor shall, accept and comply with additional conditions of funding relating to the improvement of the Services. The ESFA may refer the Contractor for a Further Education Commissioner-led Diagnostic Assessment. Where a Further Education Commissioner-led Diagnostic Assessment has been undertaken additional conditions of funding will include complying with any recommendations from that Diagnostic Assessment. These conditions will apply until the Contractor can demonstrate the required improvement to the ESFA's satisfaction; and/or
  - 18.28.2 require the Contractor to inform the employer of any Apprentice that the ESFA assesses that the Services, in whole or in part, fall below the Minimum Standards; and/or
  - 18.28.3 require the Contractor to suspend the recruitment of Apprentices to, and/or to cap any growth in, those learning programmes which are identified as below the Minimum Standards; and/or
  - 18.28.4 where the Contractor is a college in accordance with the "Rigour and Responsiveness in Skills" and 'Colleges Oversight: Support and Intervention' policies, the ESFA will write to the Contractor to confirm the position and thereafter consult with the Contractor's governors, principal, and, where required, local stakeholders. The Contractor may be subject to a Further Education Commissioner intervention assessment. Where an assessment is undertaken, the Contractor must comply with the requirements/requests of the Further Education Commissioner to enable him to undertake his role.
  - 18.28.5 give consideration to the Services which are below the Minimum Standards in its allocations when finalising the amount of Funding in any subsequent Contract between the Parties; and/or;
  - 18.28.6 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; and/or
  - 18.28.7 terminate this Contract in accordance with Clause 24.2.18 (Termination) in full, or that part of the Services failing to meet the Minimum Standards.

18.29 The failure of the Contractor, as assessed by the ESFA, to comply with any requirements of Clauses 18.28 to 18.28.4 within such time as the ESFA may deem reasonable may lead to the ESFA taking such actions as it deems appropriate which may include, but is not limited to, terminating in accordance with Clause 24.2.19 (Termination).

### **New Register of Apprenticeship Training Providers Registration**

18.30 Upon being invited to do so by the ESFA by way of a written notice the Contractor should apply for registration on the New Register of Apprenticeship Training Providers. In the event that the Contractor does not make an application for registration or is unsuccessful in their application for such registration the ESFA will usually, in accordance with its published policy <https://www.gov.uk/guidance/register-of-apprenticeship-training-providers> remove the Contractor from the Register of Apprenticeship Training Providers and terminate this Contract by written notice to the Contractor pursuant to Clause 24.2.8. Where the ESFA considers that there are exceptional circumstances and the Contractor is actively delivering Apprenticeships, the ESFA may decide to prohibit the Contractor from starting any new Apprenticeships as an alternative to termination and this Contract shall be deemed to have been varied accordingly to remove the right for the Contractor to start any new Apprenticeships until the ESFA lifts the prohibition in accordance with Clause 18.33 or this Contract comes to an end (either through termination or expiry) whichever is the earlier. Exceptional circumstances include, but are not limited to:

18.30.1 The proximity for the planned end dates for existing Apprenticeships being such that moving the affected Apprentices to alternative provision would cause significant disadvantage to them;

18.30.2 The size or complexity of the Contractor's Apprenticeship programme would require additional time (in excess of three months) to transfer the existing Apprentices to other providers;

18.30.3 A suitable alternative provider is not available due to the niche nature of the provision or the delivery location.

18.31 Where the ESFA decides to prohibit the start of any new Apprenticeships, pursuant to Clause 18.30 as an alternative to termination it shall give written notice of its decision to the Contractor accordingly and shall set out in the written notice the date from which the prohibition shall take effect. Subject to Clause 18.33 the prohibition shall take effect until the date of expiry or earlier termination of this Contract in accordance with Clause 24 (Termination).

18.32 In the event that the Contractor fails to comply with a notice served by the ESFA pursuant to Clause 18.30 requiring registration on the New Register of Apprenticeship Training Providers the ESFA may terminate this Contract in accordance with Clause 24 (Termination).

18.33 Subsequent to the service of a notice pursuant to Clause 18.30, and where the Contract has not been terminated pursuant to Clause 24 (Termination) and where the Contractor makes a successful application and is registered on the New RoATP the ESFA may, upon further written notice to the Contractor, lift the suspension on the Contractor starting new Apprenticeships and the Contractor may recommence delivery from the date specified in any such further notice.

## **19 Information for Apprentices**

19.1 As part of the delivery of the Services, the Contractor must provide high quality and easily accessible information and advice to help Apprentices to understand the opportunities and support available to them about education, training or connected matters (including employment);

19.1.1 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

19.1.2 if the information and advice is embedded as part of the delivery of the Services the Contractor must work towards achieving the matrix Standard accreditation within 12 months of the start of the Contract.

19.1.3 Where the Services are delivered by a sub-contractor on behalf of the Contractor, the requirements set out in Clauses 19.1.1 and 19.1.2 must be applied to the sub-contractor. This does not apply where the Contractor retains responsibility for the delivery of information and advice to the Apprentices.

19.1.4 Once achieved, matrix Standard accreditation is valid for three years. As part of their accreditation the Contractor is required to successfully demonstrate their continuous improvement activities to their matrix Assessor through the use of the online Self Reflection Tool on an annual basis.

## **20 Fraud and Irregularity**

20.1 The Contractor shall notify the ESFA immediately 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:

20.1.1 collusion with members of the staff of the ESFA or employees of the Department;

20.1.2 computer fraud;

20.1.3 the submission to the ESFA of inaccurate, incomplete, misleading

or falsified information for the purpose of a claim for Funding;

20.1.4 fraud involving awarding organisations; and

20.1.5 fraud involving sub-contractors;

provided that nothing in this Clause 20 shall require the Contractor to do anything, which may cause it to infringe any law.

20.2 Where the ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract and payments made hereunder, the ESFA 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 including electronic records and to interview the Contractor's servants or agents engaged with the delivery of the Contract.

20.3 Where the ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract and payments made hereunder, the ESFA may require the Contractor to procure the services of an independent accountant or equivalent professional to investigate at the Contractor's cost (or the ESFA will procure and recharge to the Contractor at its sole discretion).

20.4 Where the ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract or any other contract between the ESFA and the Contractor and payments made there under it shall have the right to suspend payments and/or require the Contractor to suspend recruitment of Apprentices under this Contract and any other Contract between the Parties.

20.5 The Parties shall co-operate in the identification of Apprentices 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 Apprentices. The ESFA shall provide a named contact or telephone answering machine for receiving such information.

## **21 Additional Contractual Obligations**

21.1 The ESFA reserves the right to impose additional contractual obligations where it considers it is necessary to do so to secure the delivery of education and training of a reasonable quality by the Contractor, or to ensure that the resources provided by the ESFA are being used effectively and efficiently or to require the Contractor to address concerns about its financial viability.

## **22 European Funding and Other Sources of Funding**

22.1 Where notified in writing by the ESFA that the Funding under this Contract is required to be used as match funding:



- 22.1.1 The Contractor must follow the ESF Funding Rules for publicity, horizontal themes, surveys, reporting, evidence and document retentions and which include the use of the ESF logo.
- 22.1.2 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 as match funding.
- 22.1.3 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 other body undertaking the audit or monitoring), to the ESFA and anybody set out in Clause 12.2 that no double funding has occurred in respect of the Services delivered under the Contract.
- 22.1.4 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.
- 22.1.5 The ESFA reserves the right to use payments made under the Contract as match funding for ESF 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 ESF.
- 22.1.6 The Contractor shall inform Apprentices or others that the Services delivered have been financed in whole or part by ESF.
- 22.2 The Contractor must ensure that all Apprentices are aware of the support of the ESF in respect of the Services being delivered under this Contract.

## **23 Breach**

- 23.1 For the avoidance of doubt:
- a) 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;
  - b) 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**

- 23.2 Without prejudice to any other remedy, in the event of a Minor Breach, 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. In addition, where the Contractor is in breach, the ESFA may require the Contractor to suspend the recruitment of Apprentices, and/or may cap any growth while the breach is being remedied.
- 23.3 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Clause 23.2 or such other period as may be agreed between the Parties it shall constitute a Serious Breach by the Party in breach.

## **Serious Breach**

- 23.4 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:
- 23.5 The Party not in breach shall be entitled to serve a 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.
- 23.6 In the event that a Serious Breach of this Contract by the Contractor is in the view of the ESFA not, or cannot be, remedied within the period specified in the notice served under Clause 23.5, or such other period as may subsequently be agreed in writing between the Parties, the ESFA may:
- (a) require the Contractor to suspend recruitment of Apprentices, and cap growth of Apprenticeships in future years, to the Services to which the Serious Breach relates;
  - (b) give consideration to the Serious Breach in its allocations when finalising the amount of Funding in any subsequent Contract(s) between the Parties;
  - (c) reduce, suspend or recover payment to the Contractor in respect of that part of the Provision to which the Serious Breach relates;
  - (d) terminate, in accordance with Clause 24 (Termination), in full or in respect of that part of the Provision to which the Serious Breach relates.
- 23.7 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 23.5 or such other period as may be agreed between the Parties, the Party not in breach may at its sole discretion terminate the Contract or that part of the Service to which the breach relates with immediate effect on notice in writing to the other Party.

## 24 Termination

- 24.1 The Contractor shall notify the ESFA in writing immediately upon the occurrence of any of the following events (“Insolvency Event(s)”):
- 24.1.1 where the Contractor is an individual and if a petition is presented for the Contractor’s bankruptcy or a criminal bankruptcy order is made against the Contractor, or it makes any composition or arrangements with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage their affairs; or
  - 24.1.2 where the Contractor is not an individual but is a firm; or a number of persons acting together in any capacity; if any event in Clause 24.1.1 or 24.1.3 of this condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or
  - 24.1.3 where the Contractor is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or management with its creditors, or an administrator, receiver or manager is appointed by the company, a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 24.2 The ESFA may terminate the Contract without liability to the Contractor by giving to the Contractor, or where relevant their representatives, written notice, having effect immediately or after such periods as the ESFA may determine as follows:
- 24.2.1 where any of the events in Clause 24.1 occur;
  - 24.2.2 in accordance with Clause 23.6 (Serious Breach);
  - 24.2.3 if Regulation 73(1) (b) of The Public Contracts Regulations 2015 applies to the Contractor;
  - 24.2.4 A Change in Control is proposed or has taken place which is not permissible under Regulation 72 of the Public Contracts Regulations 2015;
  - 24.2.5 within three (3) months of a Restricted Share Transfer in accordance with Clause 6.8.3.

- 24.2.6 where the Contractor is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983;
- 24.2.7 in the event that that ESFA is of the reasonable opinion that the conduct of the Contractor amounts to a fundamental breach of the Contract which is incapable of remedy;
- 24.2.8 where the Contractor ceases to be on the Register of Training Organisations and/or the Register of Apprenticeship Training Providers maintained by the ESFA;
- 24.2.9 the Contractor or any of its employees shall have committed any offence under the Bribery Act 2010;
- 24.2.10 on the occurrence of the statutory provisos contained in Regulation 73(1)(a) to (c) of the Public Contracts Regulation 2015;
- 24.2.11 the outcome of any financial health and/or control assessment is inadequate;
- 24.2.12 the Contractor fails to comply with requirements imposed under Clause 18.10.1 and/or 18.10.2;
- 24.2.13 where the Contractor receives a “qualified” rating in two consecutive full funding audits;
- 24.2.14 an Ofsted inspection results in the Services in part thereof being assessed as inadequate;
- 24.2.15 the Contractor fails to comply with requirements imposed under 18.23.3.1 and/or 18.23.3.2;
- 24.2.16 an Ofsted inspection results in the Services being assessed as overall inadequate;
- 24.2.17 the ESFA assesses that the Services delivered under this Contract, in whole or part, are below the minimum standards; or
- 24.2.18 in accordance with Clause 18.28.6 where the Contractor fails to meet the Minimum Standards;
- 24.2.19 in accordance with Clause 18.28.79, where the Contractor fails to comply with the requirements set out in Clauses 18.28 to 18.28.4;
- 24.2.20 an Ofsted monitoring visit results in the Services being assessed as having made “insufficient progress” and in the reasonable view of the ESFA Apprentices may be at immediate risk on safeguarding

grounds and/or the quality of leadership and/or training provision is such that one or more Apprentice has no reasonable prospect of achieving his or her training objective;

- 24.2.21 The OfS has assessed the Contractor as having “not met” one or more of the conditions.
- 24.3 In addition to the rights of termination under any other clauses of this Contract, The ESFA shall be entitled to terminate this Contract in respect of all or part of the Services provided under the Contract by giving to the Contractor not less than three months’ written notice to that effect, without the need to give a reason for termination.
- 24.4 If the ESFA considers in its absolute discretion that on receipt of a notice pursuant to Clause 6.3 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.
- 24.5 This Contract will be voidable where, following an evaluation of the last three (3) years’ data submissions relating to any other contract with the ESFA, the ESFA concludes that the Contractor was in Serious Breach of that contract or contracts and if the ESFA had known at the time of awarding and/or entering into this Contract that the Contractor had committed a Serious Breach, it would not have awarded and/or entered into this Contract.
- 24.6 If the circumstances set out in Clause 24.5 arise and the Contract is declared void, the parties will be deemed to have subsequently entered into a new legally binding agreement that includes the provisions set out in the table at Clause 42 (Continuing Obligations).
- 24.7 If the ESFA terminates another contract with the Contractor this Contract will be terminated forthwith unless the ESFA confirms in writing that the Contract is to remain in force.
- 24.8 Where the ESFA terminates the Contract under any of Clauses 24.2 to 24.3 it shall do so by serving a written notice on the Contractor specifying the Termination Date.
- 24.9 Termination under Clause 24 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.
- 24.10 Where the Contractor goes into administration or liquidation, the ESFA must be assumed to be a creditor of the Contractor. The Contractor must take steps to ensure that the ESFA is provided with details of the administrator or liquidator and receives notification of any creditors meetings. The ESFA will confirm whether in fact it is a creditor within 8 weeks of being notified that the Contractor is in administration or liquidation.

- 24.11 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.
- 24.12 Notice of Termination of this Contract under Clauses 18, 23 or this Clause 24 shall result in the Contractor being removed from the Register of Training Organisations and the Register of Apprenticeship Training Providers maintained by the ESFA.
- 24.13 For the avoidance of doubt, after notice of termination and/or an Insolvency Event affecting the Contractor, the Contractor must not share any information about Apprentices, including but not limited to ESFA Data, with another contractor unless the ESFA provides written authorisation for the Contractor to do so. In addition, the Contractor shall not recruit Apprentices from another contractor that has been issued with a notice of termination and/or in relation to whom an Insolvency Event has occurred, without the permission of the ESFA.
- 24.14 The Contractor must not recruit new Apprentices after notice of termination of the Contract has been given. The ESFA will not be liable to make payments in respect of any Apprentices recruited in breach of this clause.

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

- 25.1 The Parties agree that if upon termination of this Contract or any part of the Service being provided 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 Clause 1 in Schedule 1 of the Contract so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties.
- 25.2 On termination (in whole or in part) or expiry of this Contract for any reason, the Contractor shall do its utmost to minimise disruption caused to Apprentices 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. The Contractor is required to ensure it performs its obligations to assist in the orderly transition of the Services from the Contractor to the ESFA and/or any Successor Contractor in the event of termination (including partial termination) or expiry of this Contract. This will include the transition of the Services to a follow-on contract with the same Contractor if applicable. 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 25.2.
- 25.3 Three (3) months prior to the Expiry Date of the Contract (or where the Contract

is terminated within the timescale notified by the ESFA, the Contractor will upon request:

- 25.3.1 provide for transfer to the ESFA and/or the Successor Contractor of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents including that relating to configuration of software; and
  - 25.3.2 provide the ESFA and/or Successor Contractor with reasonable access to such members of the Contractor's or its sub-contractors' personnel as have been involved in the, development, provision or management of the Services and who are still employed or engaged by the Contractor or its sub-contractors.
- 25.4 On termination or expiry of this Contract for any reason the Evidence Packs will become the property of the ESFA. The Contractor shall allow the ESFA his servants or agent to have access to its premises to remove Evidence Packs or otherwise comply with a request by the ESFA to transfer Evidence Packs to any third party nominated by the ESFA.
- 25.5 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 provision of the Services (or its equivalent) upon the expiry or other termination of this Contract. The Contractor shall use all reasonable endeavors 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.
- 25.6 The Contractor will:
- 25.6.1 with respect to learning or training in progress, document the current status and stabilising for continuity during transition;
  - 25.6.2 provide assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services;
  - 25.6.3 answer all reasonable questions from the ESFA and/or its Successor Contractor regarding the Services;
  - 25.6.4 agree with the ESFA and/or the Successor Contractor a plan for the migration of the ESFA Data to the ESFA and/or the Successor Contractor. The Contractor will fully co-operate in the execution of the agreed plan, providing skills
- 25.7 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, monitoring, management and reporting of the Programme, including the documents and data, if any, referred to in the Schedules.

25.8 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 provision of the Services.

## **26 Force Majeure**

26.1 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 service 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.

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

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

27.2 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.

27.3 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.

27.4 The Contractor shall provide the ESFA or agents acting on its behalf with the information it requires under Clause 27.3 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.

27.5 Failure to comply with any request for information under Clause 27.3, at all or in the required timescales, will constitute a Minor / Serious Breach of this Contract.

## **28 Retention of Documents**

28.1 The Contractor and its sub-contractors shall maintain original invoices; management information returns and all other documents necessary to verify the Services in relation to this Contract for 6 years from the end of the financial year in which the last payment is made.



- 28.2 Where any payments made under this Contract have been used as match-funding as notified in writing by the ESFA under Clause 22 (European Funding and Other Sources of Funding) for an ESF project the Contractor will be required to retain all documents necessary to verify the Services provided by itself or by its sub-contractors. Documents to support claims must be retained for a minimum of three years after the European Commission has made its final payment. For the 2007-13 ESF Programme this is expected to be until at least 31 December 2022 and for the 2014-20 ESF Programme until at least 31 December 2030.
- 28.3 Confirmation of the document destroy date will be notified in writing by the ESFA. Without prejudice to any of the other rights under the Contract to recover funds, The ESFA will be entitled to recover from the Contractor any sums which it is required to repay to the European Social Fund as a result of the Contractor's failure to comply with this Clause 28.
- 28.4 The provisions of this Clause 28 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **29 Variation**

- 29.1 This Contract shall not be varied or amended unless such variation or amendment has been issued by the ESFA in writing.

## **30 Status of Contract**

- 30.1 Nothing in this Contract shall have the effect of making the Contractor, the servant or agent 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.

## **31 Waiver**

- 31.1 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.

## **32 Third Party Rights**

- 32.1 Save as specifically provided in the Contract none of the terms of this Contract are intended to be enforceable by any Apprentices or other third party.

## **33 Notice**

- 33.1 Any notice or other document to be given under this Contract must be in writing and will 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 (including but not limited to the Manage Your Education & Skills Funding service) 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.
- 33.2 All such notices and documents must be in the English language. Any notice or other document will 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 on the day of delivery or where notice is given by electronic media, on the working day following transmission. To prove the giving of a notice or other document it will be sufficient to show that it was despatched.

#### **34 Governing / Jurisdiction**

- 34.1 This Contract shall be governed by and construed in accordance with English Law.

#### **35 Dispute Resolution**

- 35.1 Any dispute, difference or question arising between the Parties either during the currency of the Contract or afterwards shall be referred to the nominated contacts for the ESFA and the Contractor for discussion and review in order to try to resolve the same.
- 35.2 In the event of the nominated contacts being unable to resolve the relevant issue, either party may request in writing that the matter is referred to the ESFA's nominated representative and the Contractor's representative nominated for this purpose (jointly "the Dispute Resolution Panel") for formal review and consideration. Any request for referral to the Dispute Resolution Panel must include details of the dispute and any proposals to resolve it.
- 35.3 The Dispute Resolution Panel will meet within 28 days of receiving a request for referral made in accordance with Clause 35.2 above.

#### **36 Feedback and Complaints**

- 36.1 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 Apprentices and/or their representatives and employers and the wider community.

- 36.2 The Contractor must ensure that Apprentices are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Apprentices who wish to complain.
- 36.3 The Contractor shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the ESFA.
- 36.4 Where a complaint has not been resolved to the satisfaction of the complainant the Contractor must advise the complainant of his or her right to complain to the ESFA and co-operate with any investigation carried out by the ESFA and act on any recommendations made by the ESFA following the investigation.

### **37 State Aid**

- 37.1 The Contractor should satisfy itself, if the European rules on State Aid apply to the Services delivered under this Contract.
- 37.2 Where the rules on State Aid apply, the ESFA will supply to the Contractor details of the records that the Contractor will need to collect and retain.
- 37.3 The ESFA reserves the right to require the Contractor to obtain a contribution towards the cost of the Services delivered under this Contract from the employer of any participant. Where a contribution is required, the ESFA will confirm to the Contractor in writing the exact percentage of the contribution.
- 37.4 Where the ESFA requires the Contractor to obtain a contribution towards the cost of the Services under Clause 37.3 above, the Contractor must provide evidence that the contribution has been received.
- 37.5 In the event that any Funding paid under this Contract is deemed to constitute unlawful state aid ESFA reserves the right to require immediate repayment of any such Funding.

### **38 Intellectual Property Rights**

- 38.1 In consideration of the ESFA making the payments to the Contractor in connection with the Services the Contractor hereby grants (and, where relevant, shall procure from any necessary third parties the grant) to the ESFA a non-exclusive, irrevocable, worldwide, royalty-free licence (with the right to license others) of any of the Contractor's Foreground Intellectual Property that the ESFA may reasonably require to be able fully to exploit, develop and commercialise the results of the Services, including, without limitation, the Work.
- 38.2 The provisions of this Clause 38 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **39 Disposal of Assets and Change of Use**

- 39.1 In respect of Assets whose value exceeds £2,500 including VAT the following provisions shall apply.
- 39.2 For the purposes of this section:
- a) 'Asset' shall mean any property, real or personal, tangible or intangible;
  - b) 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;
  - c) the use of any Asset shall be considered to have changed if the Contractor uses it for any purpose other than for the provision or connected with the provision of Services under the Contract;
  - d) '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.
- 39.3 The Contractor shall ensure that any Asset financed by the ESFA is adequately insured.
- 39.4 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.
- 39.5 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.
- 39.6 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, to the ESFA unless otherwise agreed with the ESFA.
- 39.7 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 Clause 39.6 above.
- 39.8 In the event of the Contractor being taken over, merging or going into liquidation, all Assets financed by the ESFA, or the equivalent portion of their market value, will become the property of the ESFA.
- 39.9 The provisions of this clause 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.

## **40 Effective Date**

40.1 The terms and conditions set out in this document will take effect from 1 January 2018 and will be reviewed on or before 31 March 2019 (“the Initial Contract Period”) and on or before each 31 March while the Contract remains in force”.

## **41 Headings**

41.1 The headings to conditions shall not affect their interpretation.

## **42 Continuing Obligations**

42.1 Save as otherwise expressly provided in this Contract:-

42.1.1 the termination or expiry of this Contract will be without prejudice to any accrued rights and obligations under this Contract as at the Expiry Date or the Termination Date; and

42.1.2 the termination or expiry of this Contract will not affect the continuing rights or obligations of the ESFA and the Contractor under the clauses in the table below and/or under any other provision of this Contract which is expressed to survive expiry or termination or which is required to give effect to such expiry or termination or the consequences of such expiry of termination for a period of six (6) years, or such time period as set out in the Specification (Schedule One) for European Social Fund direct and match funding, after such expiry or termination:

Clause	Description
7	Freedom of Information and Confidentiality
10	Liability
11	Insurance
12	Access and Monitoring
16	Data Protection and Protection of Personal Data
18	Quality Assurance and Raising Standards
24	Termination
25	Transfer of Responsibility on Expiry or Termination
27	Public reputations of the Parties/Press Releases
35	Dispute Resolution

### **43 Entire Contract / Amendments**

43.1 The Contract shall comprise the following:

Terms and Conditions

Funding Rules

ESF Funding Rules

Appendix 1

Schedule 1

Schedule 2 Processing Personal Data and Data Subjects

43.2 This Contract constitutes the entire Contract between the parties and shall not be varied except by an instrument in writing signed by the Parties.