

Conditions of Funding (Grant) (Colleges)

Section	Change	Clause Reference
“College”	Definition has been added	1 Definitions
“Controller”	Definition has been renamed and amended “Data Controller” takes the meaning given in the UK GDPR;	1 Definitions
“Data”	Definition has been added	1 Definitions
“Data Subject”	Definition has been renamed and amended “Data Subject”, “Process” and “Processing” takes the meaning given in the UK GDPR;	1 Definitions
“Data Subject Access Request”	Definition has been renamed “Data Subject Access Request” (SAR or DSAR)	1 Definitions
“Department Data”	The last paragraph has been amended including but not limited to ILR Data, e-portfolios and learner files;	1 Definitions
“Earnings Adjustment Statement”	Definition has been added	1 Definitions
“Exemption Case”	Definition has been added	1 Definitions
“Funding”	Definition has been amended	1 Definitions

Section	Change	Clause Reference
	means the funding paid to the College by the Department in accordance with this Agreement and the Funding Rules for the delivery of the Services;	
“Funding Stream”	Definition has been added	1 Definitions
“GDPR”	Definition has been amended to UK GDPR and all references to GDPR have been amended to UK GDPR	1 Definitions
“Good Industry Practice”	Definition has been amended means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.	1 Definitions
“ILR”	Definition has been added	1 Definitions
“Learner Files” / “Evidence Packs”	Definition has been renamed “Learner Files” / “Learner Records” / “Evidence Packs”	1 Definitions
“Personal Data Requiring Sensitive Processing”	Definition has been added	1 Definitions
“Processor”	Definition has been renamed and amended “Data Processor” takes the meaning given in the UK GDPR ;	1 Definitions
“Processor Personnel”	Definition has been renamed “Data Processor Personnel”	1 Definitions

Section	Change	Clause Reference
“Services”	Definition has been amended means the services to be provided in accordance with the Funding Rules and the Specification (Schedule 1);	1 Definitions
“Sub-Contract”	Definition has been added	1 Definitions
“Sub-Contracting Threshold”	Definition has been added	1 Definitions
“Sub-Contractor”	Definition has been added	1 Definitions
“Sub-Processor”	Definition has been renamed “ Data Sub-Processor”	1 Definitions
Clause 5.1.1	Clause 5.1.1 has been amended 5.1.1 The College must put in place the necessary internal control framework, including an internal audit function if appropriate to ensure that it meets its obligations and those of its Sub-Contractors under this Agreement.	5 Performance Monitoring
Clauses 8.11 to 8.11.3	Clause 8.11 and sub-clauses 8.11.1 to 8.11.3 have been added 8.11 Where it applies 8.11.1 The College must comply with the Modern Slavery Act 2015 and must have in place throughout the Agreement Period policies and procedures to ensure full compliance.	8 Learner Welfare

Section	Change	Clause Reference
	<p>8.11.2 The College must ensure that all Sub-Contracts that it enters into include an obligation for the Sub-Contractor to comply with the Modern Slavery Act 2015 with special emphasis on express anti-slavery and anti-human trafficking provisions.</p> <p>8.11.3 The College shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain.</p>	
Clause 10.8	<p>Clause 10.8 has been amended</p> <p>10.8 Where appropriate, the College must confirm in writing to the Department that their (including College Related Parties) Centre Approval Status for the relevant Services 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 Organisation name(s). The College must notify the Department immediately in writing via the Contact Form: General Enquires at Education and Skills Funding Agency - GOV.UK (www.gov.uk) if it receives any sanction from an Awarding Organisation, including but not limited to the suspension and/or removal of Centre Approval Status and/or the removal of the ability to register or certificate learners.</p>	10 Quality Assurance and Raising Standards
Clause 14.2	<p>Clause 14.2 has been restructured to separate out Clauses 14.2.1 and 14.2.3. Clause 14.2.2 and the last paragraph of Clause 14.2 have been added.</p> <p>14.2 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and payments made hereunder, the Department and / or its agents will have:</p>	14 Fraud and Irregularity

Section	Change	Clause Reference
	<p>14.2.1 the right of access to the College's Premises (or that of any of its Sub-Contractors) at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records;</p> <p>14.2.2 the right to require the College's to provide written authority to enable the Department to obtain such documents, records and/or information directly from third parties; and</p> <p>14.2.3 the right to interview the College's servants or agents engaged with the delivery of the Agreement.</p> <p>Failure to comply with this Clause 14.2 will constitute a Serious Breach of this Agreement.</p>	
Clause 14.5	<p>Clause 14.5 has been amended</p> <p>14.5 Where the College is a registered or exempt charity, the College will inform the Department of any schemes, orders or official warnings issued to them by the Charity Commission. Failure to inform the Department will constitute a Serious Breach of this Agreement.</p>	14 Fraud and Irregularity
Clause 15.1.1	<p>Clause 15.1.1 has been amended</p> <p>15.1.1 Subject to any obligation in respect of confidentiality, the UK GDPR and DPA 2018 and Confidential Information, the Parties will use all reasonable endeavours to provide and share information and data reasonably required by the other:</p>	15 Relationships
Clause 19.3	<p>Clause 19.3 has been amended</p>	19 Department Data

Section	Change	Clause Reference
	<p>19.3 The College must take all necessary steps to ensure that any Department Data which comes into its possession or control is protected in accordance with the UK GDPR and DPA 2018 and appropriate security procedures as set out in Schedule 7 (Security & Department Policies) and in compliance with Good Industry Practice (having regard to the nature of its other obligations under this Agreement and under the UK GDPR and DPA 2018).</p>	
<p>Clause 19.6.2</p>	<p>Clause 19.6.2 has been amended</p> <p>19.6.2 not disclose the Department Data to any third party, other than in accordance with the requirements of the UK GDPR and DPA 2018 for the purposes of fulfilling its obligations under this Agreement, except with the prior written consent of the Department or as required by this Agreement;</p>	<p>19 Department Data</p>
<p>Clause 20.19</p>	<p>Clause 20.19 has been added</p> <p>20.19 In the circumstances set out in Clause 36.1.7, the Department may elect to take the role of Data Controller.</p>	<p>20 Data Protection and Protection of Personal Data</p>
<p>Clause 21.1.1</p>	<p>Clause 21.1.1 sub-clause (b) has been amended</p> <p>(b) in adherence with the UK GDPR and Data Protection Act 2018;</p>	<p>21 Submission of Learner Data</p>
<p>Clause 21.1.1</p>	<p>Clause 21.1.1 sub-clause (f) has been added</p> <p>(f) any written request from the Department.</p>	<p>21 Submission of Learner Data</p>

Section	Change	Clause Reference
Clause 25.3	<p>Clause 25.3 has been amended</p> <p>25.3 During the period of three months (3) preceding the expiry of this Agreement or within 21 days after the Department or the College has given notice to terminate the Agreement, the College must, subject to the provisions of the UK GDPR and Data Protection Law, provide and thereafter keep updated at monthly intervals, to the Department and to the Successor College information equivalent to the Relevant Personnel Documentation and the Staffing Information in respect of each employee whom the College reasonably believes will be a Future Transferring Employee provided that prior to so doing the Successor College nominated by the Department will have executed in writing a confidentiality undertaking in favour of the College.</p>	25 Re-provision of the Services
Clause 26	<p>Clause 26 has been renamed</p> <p>26 PAYMENT, FUNDING AND AUDIT</p>	26 Payment, Funding and Audit
Clause 26.1	<p>Clause 26.1 has been renamed</p> <p>26.1 Payment, Funding and Audit provisions</p>	26 Payment, Funding and Audit
Clause 26.1.7	<p>Clause 26.1.7 has been amended</p> <p>26.1.7 Where the Department identifies errors which it deems material in the data that the College is required to provide under the Agreement to support the payment of Funding, the Department reserves the right at its absolute discretion to require the College at the College's cost to carry out a 100% audit of all or part of</p>	26 Payment, Funding and Audit

Section	Change	Clause Reference
	<p>the Services by a deadline specified by the Department and / or to require the College to repay Funding equivalent to the full amount of the Funding that has been wrongly claimed or paid. If only a sample of the Services has been audited, the Department reserves the right to calculate an error rate based on the said sample and claim repayment from the College of an extrapolated amount based on the error rate identified and the total value of the Funding paid to the College under this Agreement.</p>	
<p>Clause 26.1.8</p>	<p>Clause 26.1.8 has been amended</p> <p>26.1.8 Without prejudice to any other provisions in this Agreement, at the Department’s discretion, such amounts as are identified as being recoverable under Clause 26.1.7, may be recovered by making adjustments to data submitted by the College under the Agreement, or by raising an invoice for payment by the College, or by making deductions from future payments due to the College under the Agreement. Failure to settle such amounts by the College will constitute a Serious Breach under Clause 34 (Minor and Serious Breach) of this Agreement. The decision of the Department as to the amount of recovery under this Clause 26.1 (Payment, Funding and Audit provisions) is final.</p>	<p>26 Payment, Funding and Audit</p>
<p>Clauses 26.1.11 to 26.1.14</p>	<p>Clauses 26.1.11 to 26.1.14 have been added</p> <p>26.1.11 Where the Department identifies that the allocated Funding has been miscalculated and that the College has been overpaid as a result, the Department will notify the College in writing of the</p>	<p>26 Payment, Funding and Audit</p>

Section	Change	Clause Reference
	<p>amount of the overpayment, the date when the Department will seek to recover the Funding and the method of recovery such as being through an invoice or through setting off the overpayment against future payments of the Funding.</p> <p>26.1.12 If the College wants to make representations in relation to the notification it received in accordance with Clause 26.1.11, the College must put them in writing within 5 Working Days of the date the notification received from the Department. The College may make representations to the Department where it has incurred in good faith costs or liability in excess of the amount of allocated Funding that the Department has now notified as being the correct amount of Funding that the College should have been allocated.</p> <p>26.1.13 The Department will consider any representations made by the College in accordance with Clause 26.1.12 and issue the College with written notification of its final decision including the amount of overpayment of Funding to be repaid, the date when the Department will recover the Funding and the method of recovery. The Department will also set out the basis on which it has made its decision and shall include an amended Schedule 2 setting out the corrected Funding allocation.</p> <p>26.1.14 The decision of the Department as to the amount of recovery of Funding that it is due to it from the College is final.</p>	
Clause 28.2.3	Clause 28.2.3 sub-clause (e) has been added	28 College's Records and

Section	Change	Clause Reference
	(e) provision of any accounting records as referred to in Section 386 of the Companies Act 2006 and/or financial records as the Department may require which if the College is not a company may include similar accounting records as are referred to in Section 386 of the Companies Act 2006.	Audit
Clause 29	Clause 29 has been renamed 29 SUBSIDY CONTROL	29 Subsidy Control
Clause 29.1	Clause 29.1 has been amended 29.1 The College should satisfy itself, if the Subsidy Control Rules apply to the Funding received in relation to the Services delivered under this Agreement. Guidance on this can be found at https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities.	29 Subsidy Control
Clause 29.2	Clause 29.2 has been amended 29.2 Where the rules on Subsidy Control apply, the College will collect and retain appropriate records and will supply those records to the Department on its request.	29 Subsidy Control
Clause 29.5	Clause 29.5 has been amended	29 Subsidy Control

Section	Change	Clause Reference
	29.5 In the event that any funding paid under this Agreement is deemed to constitute unlawful subsidy control the Department reserves the right to require immediate repayment of any such funding.	
Clause 30	Clause 30 has been renamed 30 SUB-CONTRACTING	30 Sub-Contracting
Clauses 30.1 to 30.3	<p>Clauses 30.1 to 30.15.4 have been deleted and replaced with the Clauses 30.1 to 30.3</p> <p>30.1 The College may enter into Sub-Contracts provided it does so in compliance with Schedule 1 (Specification and Monitoring) and Schedule 10 (Sub-Contracting).</p> <p>30.2 Notwithstanding any arrangements the College has entered into with any Sub-Contractor, the College shall not be relieved or excused of responsibility or liability under this Agreement nor shall performance of its obligations be affected by the appointment of any Sub-Contractor.</p> <p>30.3 If the College does not Sub-Contract, the College must still provide a nil return via the Subcontractor Declaration to confirm this.</p>	30 Sub-Contracting
Clause 31.3.1	<p>Clause 31.3.1 has been amended</p> <p>31.3.1 Subject to Clause 31.9, an indemnity by either Party under any provision of this Agreement will be without limitation to any indemnity by that Party under any other provision of this Agreement.</p>	31 Indemnities and Liability

Section	Change	Clause Reference
Clause 31.9.1	<p>Clause 31.9.1 has been amended</p> <p>31.9.1 Subject to Clauses 31.2 (College Not Responsible) and 31.8 (No Limit on Liability) the liability of the College for the Agreement Period will be Ten Million Pounds (£10,000,000) in aggregate in respect of all claims, losses or damages, whether arising under any indemnity from tort (including negligence), breach of Agreement or otherwise under or in connection with this Agreement.</p>	31 Indemnities and Liability
Clause 31.11.1	<p>Clause 31.11.1 has been amended</p> <p>31.11.1 With regard to the Department the total aggregate liability for the Agreement Period will be limited to its obligation to pay the Funding as and when it falls due in accordance with the Agreement.</p>	31 Indemnities and Liability
Clause 33.3	<p>Clause 33.3 has been amended</p> <p>33.3 The College must not use any Funding provided by the Department under this Agreement for any of the purposes set out in paragraphs 15 and 16 of the Cabinet Office: Guidance for General Grants Grants-Standard-SIX-Grant-Agreements.pdf (publishing.service.gov.uk).</p>	33 Prohibited Acts
Clause 35.3.11	<p>Clause 35.3.11 has been added</p> <p>35.3.11 The College commits a Serious Breach of Clause 30</p>	35 Termination

Section	Change	Clause Reference
Clause 35.3.12	Clause 35.3.12 has been added 35.3.12 The College commits a Serious Breach of Clause 33.3.	35 Termination
Clause 35.13	Clause 35.13 has been amended 35.13 The College must not recruit new Learners, including Learners that have transferred from another provider , after notice of termination of the Agreement has been given. The Department will not be liable to make payments in respect of any Learners recruited in breach of this clause.	35 Termination
Clause 36.1.5	Clause 36.1.5 has been added 36.1.5 The termination or expiry of this Agreement shall be without prejudice to rights of either Party accrued prior to the Termination Date or Expiry Date and shall not affect the continuing rights of the Parties under any provision of the Agreement that either expressly or by implication has effect after the Termination Date or the Expiry Date.	36 Consequences of Termination and Expiry
Clause 36.1.6	Clause 36.1.6 has been added 36.1.6 The Department reserves the right to retain Funding that would otherwise be paid to the College prior to the Expiry Date or Termination Date and/or to demand repayment of Funding, as relevant, in order to reconcile what has already been paid to the College under Schedule 2 (Payments) with the amount the	36 Consequences of Termination and Expiry

Section	Change	Clause Reference
	College is entitled to under this Agreement (including the Funding Rules).	
Clause 36.1.7	<p>Clause 36.1.7 has been added</p> <p>36.1.7 Where this Agreement is terminated or expires, the Department may elect to take the role of Data Controller to secure and protect Learner Files, Learner Records and/or Evidence Packs, including e-portfolios until the Learner information can be transferred to a new Provider, the Learner, or destroyed in accordance with defined retention periods. If the Department elects to assume this role, the College shall co-operate fully to facilitate this.</p>	36 Consequences of Termination and Expiry
Clause 37.2	<p>Clause 37.2 has been amended</p> <p>37.2 On expiry or termination of this Agreement for any reason, the College shall do its utmost to minimise any disruption to Learners and shall co-operate fully with any reasonable requests made by the Department relating to this. For the avoidance of doubt the Department will be entitled to request that where the College cannot complete Learners that it will co-operate in transferring the Learners to a new provider even if this is prior to the Termination Date or Expiry Date of this Agreement and the College's Exit Plan should reflect this. The Department will not be liable for any costs prior to or after the Termination Date or Expiry Date incurred by the College in complying with this Clause 37.2.</p>	37 Exit Arrangements
Clause 37.5	Clause 37.5 has been added	37 Exit Arrangements

Section	Change	Clause Reference
	37.5 If the College does not co-operate with the Department in relation to exit in accordance with this Clause 37 and the Department incurs additional expenditure of any description as a result, the Department reserves the right to require the College to reimburse the Department for this additional expenditure.	
Clause 52.1.2	The reference to 'Audit Recovery' in the table at Clause 52.1.2 has been deleted and replaced with ' Payment, Funding and Audit '	52 Continuing Obligations
Clause 52.1.2	The reference to 'GDPR' in the table at Clause 52.1.2 has been amended to ' UK GDPR and Data Protection '	52 Continuing Obligations
Paragraph 2.2	Paragraph 2.2 has been amended 2.2 The Governing Body of the College has responsibilities for ensuring that the College's funds are used only in accordance with the College's powers as set out in the Further and Higher Education Act 1992 and/or the College's own statutory duties, articles of association or trust deeds and other obligations.	Schedule 9: College Governance
Paragraph 2.4	Paragraph 2.4 has been amended 2.4 The College will inform the Department in writing, as soon as is reasonably practicable, of the vacating or filling of the positions of the Chair of the Governing Body, the Principal, the accounting officer, and the clerk/ head of governance.	Schedule 9: College Governance
Paragraph 3	Paragraph 3 has been renamed	Schedule 9: College Governance

Section	Change	Clause Reference
	3 CHARITY REGULATION	
Paragraph 5	<p>Paragraph 5 has been added</p> <p>5 SPECIFIC GOVERNANCE REQUIREMENTS</p> <p>5.1 Any person who is selected by the Governing Body for appointment as clerk/head of governance must have a qualification relevant to the role or equivalent experience.</p> <p>5.2 The Governing Body must report in its annual reports on activities undertaken over the year to develop governors and clerks/heads of governance.</p> <p>5.3 The Governing Body must conduct an annual governance self-assessment and must have an external governance review at least once every three years, based on the governance code(s) used by the Governing Body. In accordance with the obligation to supply information to the Secretary of State (see Clause 38 Provision of Information), the Governing Body must supply the Department with details of the outcomes of governance reviews, and of progress in meeting review recommendations, when so requested.</p>	Schedule 9: College Governance
Schedule 10	Schedule 10: Sub-Contracting has been added	Schedule 10: Sub-Contracting

Conditions of Funding (Grant) (Employers)

Section	Change	Clause Reference
“Controller”	Definition has been renamed and amended “Data Controller” takes the meaning given in the UK GDPR;	1 Definitions
“Data”	Definition has been added	1 Definitions
“Data Subject”	Definition has been renamed and amended “Data Subject”, “Process” and “Processing” takes the meaning given in the UK GDPR;	1 Definitions
“Data Subject Access Request”	Definition has been renamed “Data Subject Access Request” (SAR or DSAR)	1 Definitions
“Department Data”	The last paragraph has been amended including but not limited to ILR Data, e-portfolios and learner files;	1 Definitions
“Earnings Adjustment Statement”	Definition has been added	1 Definitions
“Exemption Case”	Definition has been added	1 Definitions
“Funding”	Definition has been added	1 Definitions
“Funding Stream”	Definition has been added	1 Definitions

Section	Change	Clause Reference
“GDPR”	Definition has been amended to UK GDPR and all references to GDPR have been amended to UK GDPR	1 Definitions
“Good Industry Practice”	Definition has been amended means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.	1 Definitions
“ILR”	Definition has been added	1 Definitions
“Learner Files” / “Evidence Packs”	Definition has been renamed “Learner Files” / “ Learner Records ” / “Evidence Packs”	1 Definitions
“New Provider Monitoring Visits”	Definition has been renamed and amended “ Ofsted Monitoring Visit ” means an interim type of inspection carried out by Ofsted in accordance with the Further Education and Skills Inspection Handbook (Further education and skills inspection handbook - GOV.UK (www.gov.uk))	1 Definitions
“Personal Data Requiring Sensitive Processing”	Definition has been added	1 Definitions
“Processor”	Definition has been renamed and amended “ Data Processor ” takes the meaning given in the UK GDPR ;	1 Definitions
“Processor Personnel”	Definition has been renamed	1 Definitions

Section	Change	Clause Reference
	“ Data Processor Personnel”	
“ Services ”	Definition has been amended means the services to be provided in accordance with the Funding Rules and the Specification (Schedule 1);	1 Definitions
“ Sub-Contract ”	Definition has been added	1 Definitions
“ Sub-Contracting Threshold ”	Definition has been added	1 Definitions
“ Sub-Contractor ”	Definition has been added	1 Definitions
“ Sub-Processor ”	Definition has been renamed “ Data Sub-Processor”	1 Definitions
Clause 5.1.1	Clause 5.1.1 has been amended 5.1.1 The Employer must put in place the necessary internal control framework, including an internal audit function if appropriate to ensure that it meets its obligations and those of its Sub-Contractors under this Agreement.	5 Performance Monitoring
Clauses 8.11 to 8.11.3	Clause 8.11 and sub-clauses 8.11.1 to 8.11.3 have been added 8.11 Where it applies	8 Learner Welfare

Section	Change	Clause Reference
	<p>8.11.1 The Employer must comply with the Modern Slavery Act 2015 and must have in place throughout the Agreement Period policies and procedures to ensure full compliance.</p> <p>8.11.2 The Employer must ensure that all Sub-Contracts that it enters into include an obligation for the Sub-Contractor to comply with the Modern Slavery Act 2015 with special emphasis on express anti-slavery and anti-human trafficking provisions.</p> <p>8.11.3 The Employer shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain.</p>	
Clause 10.8	<p>Clause 10.8 has been amended</p> <p>10.8 Where appropriate, the Employer must confirm in writing to the Department that their (including Employer Related Parties) Centre Approval Status for the relevant Services 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 Organisation name(s). The Employer must notify the Department immediately in writing via the Contact Form: General Enquires at Education and Skills Funding Agency - GOV.UK (www.gov.uk) if it receives any sanction from an Awarding Organisation, including but not limited to the suspension and/or removal of Centre Approval Status and/or the removal of the ability to register or certificate learners.</p>	10 Quality Assurance and Raising Standards
Clause 12.5.3	Clause 12.5.3 has been amended	12 Inspections

Section	Change	Clause Reference
	<p>12.5.3 give consideration to the Services which are assessed as inadequate in its allocations when finalising the amount of Funding in any subsequent Agreements between the Parties; and/or</p>	
<p>Clause 12.9.1</p>	<p>Clause 12.9.1 has been amended</p> <p>12.9.1 require the Employer to, and the Employer shall, accept and comply with additional conditions of funding relating to the improvement of the overall Provision within agreed timescales. Such conditions will include complying with the published recommendations of Ofsted. These conditions will apply until a full Ofsted inspection or further Ofsted Monitoring Visit of the Employer has taken place; and/or</p>	<p>12 Inspections</p>
<p>Clause 12.9.3</p>	<p>Clause 12.9.3 has been amended</p> <p>12.9.3 require the Employer to temporarily suspend the recruitment of Learners via a sub-contracting arrangement with another main provider or employer-provider; and/or</p>	<p>12 Inspections</p>
<p>Clause 12.9.7</p>	<p>Clause 12.9.7 has been added</p> <p>12.9.7 remove the Employer from the Register of Apprenticeship Training Providers if the Employer has two (2) consecutive Ofsted Monitoring Visits each resulting in one or more “insufficient progress” judgements in relation to one or more themes.</p>	<p>12 Inspections</p>

Section	Change	Clause Reference
Clauses 12.11 to 12.12	Clauses 12.11 to 12.12 have been deleted	12 Inspections
Clause 14.2	<p>Clause 14.2 has been restructured to separate out Clauses 14.2.1 and 14.2.3. Clause 14.2.2 and the last paragraph of Clause 14.2 have been added.</p> <p>14.2 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and payments made hereunder, the Department and/or its agents will have:</p> <p>14.2.1 the right of access to the Employer's Premises (or that of any of its Sub-Contractors) at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records;</p> <p>14.2.2 the right to require the Employer to provide written authority to enable the Department to obtain such documents, records and/or information directly from third parties; and</p> <p>14.2.3 the right and to interview the Employer's servants or agents engaged with the delivery of the Agreement.</p> <p>Failure to comply with this Clause 14.2 will constitute a Serious Breach of this Agreement.</p>	14 Fraud and Irregularity
Clause 14.5	<p>Clause 14.5 has been amended</p> <p>14.5 Where the Employer is a registered or exempt charity, the Employer will inform the Department of any schemes, orders or official warnings</p>	14 Fraud and Irregularity

Section	Change	Clause Reference
	issued to them by the Charity Commission. Failure to inform the Department will constitute a Serious Breach of this Agreement.	
Clause 15.1.1	<p>Clause 15.1.1 has been amended</p> <p>15.1.1 Subject to any obligation in respect of confidentiality, the UK GDPR and DPA 2018 and Confidential Information, the Parties will use all reasonable endeavours to provide and share information and data reasonably required by the other:</p>	15 Relationships
Clause 19.3	<p>Clause 19.3 has been amended</p> <p>19.3 The Employer must take all necessary steps to ensure that any Department Data which comes into its possession or control is protected in accordance with the UK GDPR and DPA 2018 and appropriate security procedures as set out in Schedule 7 (Security & Department Policies) and in compliance with Good Industry Practice (having regard to the nature of its other obligations under this Agreement and under the UK GDPR and DPA 2018).</p>	19 Department Data
Clause 19.6.2	<p>Clause 19.6.2 has been amended</p> <p>19.6.2 not disclose the Department Data to any third party, other than in accordance with the requirements of the UK GDPR and DPA 2018 for the purposes of fulfilling its obligations under this Agreement, except with the prior written consent of the Department or as required by this Agreement;</p>	19 Department Data
Clause 20.19	Clause 20.19 has been added	20 Data Protection and Protection of

Section	Change	Clause Reference
	20.19 In the circumstances set out in Clause 36.1.7, the Department may elect to take the role of Data Controller.	Personal Data
Clause 21.1.1	Clause 21.1.1 sub-clause (b) has been amended (b) in adherence with the UK GDPR and Data Protection Act 2018;	21 Submission of Learner Data
Clause 21.1.1	Clause 21.1.1 sub-clause (f) has been added (f) any written request from the Department.	21 Submission of Learner Data
Clause 25.3	Clause 25.3 has been amended 25.3 During the period of three (3) months preceding the expiry of this Agreement or within 21 days after the Department or the Employer has given notice to terminate the Agreement, the Employer must, subject to the provisions of the UK GDPR and Data Protection Law , provide and thereafter keep updated at monthly intervals, to the Department and to the Successor Employer information equivalent to the Relevant Personnel Documentation and the Staffing Information in respect of each employee whom the Employer reasonably believes will be a Future Transferring Employee provided that prior to so doing the Successor Employer nominated by the Department will have executed in writing a confidentiality undertaking in favour of the Employer.	25 Re-provision of the Services
Clause 26	Clause 26 has been renamed 26 PAYMENT, FUNDING AND AUDIT	26 Payment, Funding and Audit

Section	Change	Clause Reference
Clause 26.1	Clause 26.1 has been renamed 26.1 Payment, Funding and Audit provisions	26 Payment, Funding and Audit
Clause 26.1.7	Clause 26.1.7 has been amended 26.1.7 Where the Department identifies errors which it deems to be material in the data that the Employer is required to provide under the Agreement to support the payment of Funding, the Department reserves the right at its absolute discretion to require the Employer at the Employer's cost to carry out a 100% audit of all or part of the Services by a deadline specified by the Department and / or to require the Employer to repay Funding equivalent to the full amount of the Funding that has been wrongly claimed or paid. If only a sample of the Services has been audited, the Department reserves the right to calculate an error rate based on the said sample and claim repayment from the Employer of an extrapolated amount based on the error rate identified and the total value of the Funding paid to the Employer under this Agreement.	26 Payment, Funding and Audit
Clause 26.1.8	Clause 26.1.8 has been amended 26.1.8 Without prejudice to any other provisions in this Agreement, at the Department's discretion , such amounts as are identified as being recoverable under Clause 26.1.7, may be recovered by making adjustments to data submitted by the Employer under the Agreement, or by raising an invoice for payment by the Employer, or by making deductions from future payments due to	26 Payment, Funding and Audit

Section	Change	Clause Reference
	<p>the Employer under the Agreement. Failure to settle such amounts by the Employer will constitute a Serious Breach under Clause 34 (Minor and Serious Breach) of this Agreement. The decision of the Department as to the amount of recovery under this Clause 26.1 (Payment, Funding and Audit provisions) is final.</p>	
<p>Clauses 26.1.11 to 26.1.14</p>	<p>Clauses 26.1.11 to 26.1.14 have been added</p> <p>26.1.11 Where the Department identifies that the allocated Funding has been miscalculated and that the Employer has been overpaid as a result, the Department will notify the Employer in writing of the amount of the overpayment, the date when the Department will seek to recover the Funding and the method of recovery such as being through an invoice or through setting off the overpayment against future payments of the Funding.</p> <p>26.1.12 If the Employer wants to make representations in relation to the notification it received in accordance with Clause 26.1.11, the Employer must put them in writing within 5 Working Days of the date the notification received from the Department. The Employer may make representations to the Department where it has incurred in good faith costs or liability in excess of the amount of allocated Funding that the Department has now notified as being the correct amount of Funding that the Employer should have been allocated.</p> <p>26.1.13 The Department will consider any representations made by the Employer in accordance with Clause 26.1.12 and issue the</p>	<p>26 Payment, Funding and Audit</p>

Section	Change	Clause Reference
	<p>Employer with written notification of its final decision including the amount of overpayment of Funding to be repaid, the date when the Department will recover the Funding and the method of recovery. The Department will also set out the basis on which it has made its decision and shall include an amended Schedule 2 setting out the corrected Funding allocation.</p> <p>26.1.14 The decision of the Department as to the amount of recovery of Funding that it is due to it from the Employer is final.</p>	
Clause 28.2.3	<p>Clause 28.2.3 sub-clause (e) has been added</p> <p>(e) provision of any accounting records as referred to in Section 386 of the Companies Act 2006 and/or financial records as the Department may require which if the Employer is not a company may include similar accounting records as are referred to in Section 386 of the Companies Act 2006.</p>	28 Employer's Records and Audit
Clause 29	<p>Clause 29 has been renamed</p> <p>29 SUBSIDY CONTROL</p>	29 Subsidy Control
Clause 29.1	<p>Clause 29.1 has been amended</p> <p>29.1 The Employer should satisfy itself, if the Subsidy Control Rules apply to the Funding received in relation to the Services delivered under this Agreement. Guidance on this can be found at https://www.gov.uk/government/publications/complying-with-the-</p>	29 Subsidy Control

Section	Change	Clause Reference
	<u>uks-international-obligations-on-subsidy-control-guidance-for-public-authorities.</u>	
Clause 29.2	<p>Clause 29.2 has been amended</p> <p>29.2 Where the rules on Subsidy Control apply, the Employer will collect and retain appropriate records and will supply those records to the Department on its request.</p>	29 Subsidy Control
Clause 29.5	<p>Clause 29.5 has been amended</p> <p>29.5 In the event that any funding paid under this Agreement is deemed to constitute unlawful subsidy control the Department reserves the right to require immediate repayment of any such funding.</p>	29 Subsidy Control
Clause 30	<p>Clause 30 has been renamed</p> <p>30 SUB-CONTRACTING</p>	30 Sub-Contracting
Clauses 30.1 to 30.3	<p>Clauses 30.1 to 30.15.4 have been deleted and replaced with the Clauses 30.1 to 30.3</p> <p>30.1 The Employer may enter into Sub-Contracts provided it does so in compliance with Schedule 1 (Specification and Monitoring) and Schedule 9 (Sub-Contracting).</p> <p>30.2 Notwithstanding any arrangements the Employer has entered into with any Sub-Contractor, the Employer shall not be relieved or excused of responsibility or liability under this Agreement nor shall performance of its obligations be affected by the appointment of any Sub-Contractor.</p>	30 Sub-Contracting

Section	Change	Clause Reference
	30.3 If the Employer does not Sub-Contract, the Employer must still provide a nil return via the Sub-Contractor Declaration to confirm this.	
Clause 31.3.1	<p>Clause 31.3.1 has been amended</p> <p>31.3.1 Subject to Clause 31.9, an indemnity by either Party under any provision of this Agreement will be without limitation to any indemnity by that Party under any other provision of this Agreement.</p>	31 Indemnities and Liability
Clause 31.9.1	<p>Clause 31.9.1 has been amended</p> <p>31.9.1 Subject to Clauses 31.2 (Employer Not Responsible) and 31.8 (No Limit on Liability) the liability of the Employer for the Agreement Period will be Ten Million Pounds (£10,000,000) in aggregate in respect of all claims, losses or damages, whether arising under any indemnity from tort (including negligence), breach of Agreement or otherwise under or in connection with this Agreement.</p>	31 Indemnities and Liability
Clause 31.11.1	<p>Clause 31.11.1 has been amended</p> <p>31.11.1 With regard to the Department the total aggregate liability for the Agreement Period will be limited to its obligation to pay the Funding as and when it falls due in accordance with the Agreement.</p>	31 Indemnities and Liability
Clause 33.3	Clause 33.3 has been amended	33 Prohibited Acts

Section	Change	Clause Reference
	<p>33.3 The Employer must not use any Funding provided by the Department under this Agreement for any of the purposes set out in paragraphs 15 and 16 of the Cabinet Office: Guidance for General Grants Grants-Standard-SIX-Grant-Agreements.pdf (publishing.service.gov.uk).</p>	
Clause 35.3.10	<p>Clause 35.3.10 has been added 35.3.10 The Employer commits a Serious Breach of Clause 30</p>	35 Termination
Clause 35.3.11	<p>Clause 35.3.11 has been added 35.3.11 The Employer commits a Serious Breach of Clause 33.3.</p>	35 Termination
Clause 35.13	<p>Clause 35.13 has been amended 35.13 The Employer must not recruit new Learners, including Learners that have transferred from another provider, after notice of termination of the Agreement has been given. The Department will not be liable to make payments in respect of any Learners recruited in breach of this clause.</p>	35 Termination
Clause 36.1.5	<p>Clause 36.1.5 has been added 36.1.5 The termination or expiry of this Agreement shall be without prejudice to rights of either Party accrued prior to the Termination Date or Expiry Date and shall not affect the continuing rights of the Parties under any provision of the Agreement that either expressly or by implication has effect after the Termination Date or the Expiry Date.</p>	36 Consequences of Termination and Expiry

Section	Change	Clause Reference
Clause 36.1.6	<p>Clause 36.1.6 has been added</p> <p>36.1.6 The Department reserves the right to retain Funding that would otherwise be paid to the Employer prior to the Expiry Date or Termination Date and/or to demand repayment of Funding, as relevant, in order to reconcile what has already been paid to the Employer under Schedule 2 (Payments) with the amount the Employer is entitled to under this Agreement (including the Funding Rules).</p>	36 Consequences of Termination and Expiry
Clause 36.1.7	<p>Clause 36.1.7 has been added</p> <p>36.1.7 Where this Agreement is terminated or expires, the Department may elect to take the role of Data Controller to secure and protect Learner Files, Learner Records and/or Evidence Packs, including e-portfolios until the Learner information can be transferred to a new Provider, the Learner, or destroyed in accordance with defined retention periods. If the Department elects to assume this role, the Employer shall co-operate fully to facilitate this.</p>	36 Consequences of Termination and Expiry
Clause 37.2	<p>Clause 37.2 has been amended</p> <p>37.2 On expiry or termination of this Agreement for any reason, the Employer shall do its utmost to minimise any disruption to Learners and shall co-operate fully with any reasonable requests made by the Department relating to this. For the avoidance of doubt the Department will be entitled to request that where the Employer cannot complete Learners that it will co-operate in transferring the Learners to a new provider even</p>	37 Exit Arrangements

Section	Change	Clause Reference
	if this is prior to the Termination Date or Expiry Date of this Agreement and the Employer's Exit Plan should reflect this. The Department will not be liable for any costs prior to or after the Termination Date or Expiry Date incurred by the Employer in complying with this Clause 37.2.	
Clause 37.5	Clause 37.5 has been added 37.5 If the Employer does not co-operate with the Department in relation to exit in accordance with this Clause 37 and the Department incurs additional expenditure of any description as a result, the Department reserves the right to require the Employer to reimburse the Department for this additional expenditure.	37 Exit Arrangements
Clause 52.1.2	The reference to 'Audit Recovery' in the table at Clause 52.1.2 has been deleted and replaced with ' Payment, Funding and Audit '	52 Continuing Obligations
Clause 52.1.2	The reference to 'GDPR' in the table at Clause 52.1.2 has been amended to ' UK GDPR and Data Protection '	52 Continuing Obligations
Schedule 9	Schedule 9: Sub-Contracting has been added	Schedule 9: Sub-Contracting

Conditions of Funding (Grant) (HEI)

Section	Change	Clause Reference
“Controller”	Definition has been renamed and amended “Data Controller” takes the meaning given in the UK GDPR;	1 Definitions
“Data”	Definition has been added	1 Definitions
“Data Subject”	Definition has been renamed and amended “Data Subject”, “Process” and “Processing” takes the meaning given in the UK GDPR;	1 Definitions
“Data Subject Access Request”	Definition has been renamed “Data Subject Access Request” (SAR or DSAR)	1 Definitions
“Department Data”	The last paragraph has been amended including but not limited to ILR Data, e-portfolios and learner files;	1 Definitions
“Earnings Adjustment Statement”	Definition has been added	1 Definitions
“Exemption Case”	Definition has been added	1 Definitions
“Funding”	Definition has been added	1 Definitions
“Funding Stream”	Definition has been added	1 Definitions
“GDPR”	Definition has been amended to UK GDPR and all references to GDPR have	1 Definitions

Section	Change	Clause Reference
	been amended to UK GDPR	
“Good Industry Practice”	Definition has been amended means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;	1 Definitions
“ILR”	Definition has been added	1 Definitions
“Learner Files” / “Evidence Packs”	Definition has been renamed “Learner Files” / “ Learner Records ” / “Evidence Packs”	1 Definitions
“New Provider Monitoring Visits”	Definition has been renamed and amended “ Ofsted Monitoring Visit” means an interim type of inspection carried out by Ofsted in accordance with the Further Education and Skills Inspection Handbook (Further education and skills inspection handbook - GOV.UK (www.gov.uk))	1 Definitions
“Personal Data Requiring Sensitive Processing”	Definition has been added	1 Definitions
“Processor”	Definition has been renamed and amended “ Data Processor” takes the meaning given in the UK GDPR;	1 Definitions
“Processor Personnel”	Definition has been renamed “ Data Processor Personnel”	1 Definitions

Section	Change	Clause Reference
“Services”	Definition has been amended means the services to be provided in accordance with the Funding Rules and the Specification (Schedule 1);	1 Definitions
“Sub-Contract”	Definition has been added	1 Definitions
“Sub-Contracting Threshold”	Definition has been added	1 Definitions
“Sub-Contractor”	Definition has been added	1 Definitions
“Sub-Processor”	Definition has been renamed “ Data Sub-Processor”	1 Definitions
Clause 5.1.1	Clause 5.1.1 has been amended 5.1.1 The Provider must put in place the necessary internal control framework, including an internal audit function if appropriate to ensure that it meets its obligations and those of its Sub-Contractors under this Agreement.	5 Performance Monitoring
Clauses 8.11 to 8.11.3	Clause 8.11 and sub-clauses 8.11.1 to 8.11.3 have been added 8.11 Where it applies 8.11.1 The Provider must comply with the Modern Slavery Act 2015 and must have in place throughout the Agreement Period policies and procedures to ensure full compliance.	8 Learner Welfare

Section	Change	Clause Reference
	<p>8.11.2 The Provider must ensure that all Sub-Contracts that it enters into include an obligation for the Sub-Contractor to comply with the Modern Slavery Act 2015 with special emphasis on express anti-slavery and anti-human trafficking provisions.</p> <p>8.11.3 The Provider shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain.</p>	
<p>Clause 10.8</p>	<p>Clause 10.8 has been amended</p> <p>10.8 Where appropriate, the Provider must confirm in writing to the Department that their (including Provider Related Parties) Centre Approval Status for the relevant Services 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 Organisation name(s). The Provider must notify the Department immediately in writing via the Contact Form: General Enquires at Education and Skills Funding Agency - GOV.UK (www.gov.uk) if it receives any sanction from an Awarding Organisation, including but not limited to the suspension and/or removal of Centre Approval Status and/or the removal of the ability to register or certificate learners.</p>	<p>10 Quality Assurance and Raising Standards</p>
<p>Clause 12.6</p>	<p>Clause 12.6 sub-clause (d) has been amended</p> <p>(d) give consideration to the Services which are assessed as inadequate in its allocations when finalising the</p>	<p>12 Inspections</p>

Section	Change	Clause Reference
	amount of Funding in any subsequent Agreements between the Parties; and/or	
Clause 12.9.1	<p>Clause 12.9.1 has been amended</p> <p>12.9.1 require the Provider to, and the Provider shall, accept and comply with additional conditions of funding relating to the improvement of the overall Services within agreed timescales. Such conditions will include complying with the published recommendations of Ofsted. These conditions will apply until a full Ofsted inspection or further Ofsted Monitoring Visit of the Provider has taken place; and/or</p>	12 Inspections
Clause 12.9.3	<p>Clause 12.9.3 has been amended</p> <p>12.9.3 require the Provider to temporarily suspend the recruitment of Learners via a sub-contracting arrangement with another main provider or employer-provider; and/or</p>	12 Inspections
Clause 12.9.7	<p>Clause 12.9.7 has been added</p> <p>12.9.7 remove the Provider from the Register of Apprenticeship Training Providers if the Provider has two (2) consecutive Ofsted Monitoring Visits each resulting in one or more “insufficient progress” judgements in relation to one or more themes.</p>	12 Inspections
Clauses 12.11 to 12.12	Clauses 12.11 to 12.12 have been deleted	12 Inspections
Clause 14.2	<p>Clause 14.2 has been restructured to separate out Clauses 14.2.1 and 14.2.3. Clause 14.2.2 and the last paragraph of Clause 14.2 have been added.</p>	14 Fraud and Irregularity

Section	Change	Clause Reference
	<p>14.2 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and payments made hereunder, the Department and/or its agents will have:</p> <p>14.2.1 the right of access to the Provider's Premises (or that of any of its Sub-Contractors) at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records;</p> <p>14.2.2 the right to require the Provider to provide written authority to enable the Department to obtain such documents, records and/or information directly from third parties; and</p> <p>14.2.3 the right to interview the Provider's servants or agents engaged with the delivery of the Agreement.</p> <p>Failure to comply with this Clause 14.2 will constitute a Serious Breach of this Agreement.</p>	
Clause 14.5	<p>Clause 14.5 has been amended</p> <p>14.5 Where the Provider is a registered or exempt charity, the Provider will inform the Department of any schemes, orders or official warnings issued to them by the Charity Commission. Failure to inform the Department will constitute a Serious Breach of this Agreement</p>	14 Fraud and Irregularity
Clause 15.1.1	<p>Clause 15.1.1 has been amended</p> <p>15.1.1 Subject to any obligation in respect of confidentiality, the UK GDPR and DPA 2018 and Confidential Information, the Parties</p>	15 Relationships

Section	Change	Clause Reference
	will use all reasonable endeavours to provide and share information and data reasonably required by the other:	
Clause 19.3	<p>Clause 19.3 has been amended</p> <p>19.3 The Provider must take all necessary steps to ensure that any Department Data which comes into its possession or control is protected in accordance with the UK GDPR and DPA 2018 and appropriate security procedures as set out in Schedule 7 (Security & Department Policies) and in compliance with Good Industry Practice (having regard to the nature of its other obligations under this Agreement and under the UK GDPR and DPA 2018).</p>	19 Department Data
Clause 19.6.2	<p>Clause 19.6.2 has been amended</p> <p>19.6.2 not disclose the Department Data to any third party, other than in accordance with the requirements of the UK GDPR and DPA 2018 for the purposes of fulfilling its obligations under this Agreement, except with the prior written consent of the Department or as required by this Agreement;</p>	19 Department Data
Clause 20.19	<p>Clause 20.19 has been added</p> <p>20.19 In the circumstances set out in Clause 36.1.7, the Department may elect to take the role of Data Controller.</p>	20 Data Protection and Protection of Personal Data
Clause 21.1.1	<p>Clause 21.1.1 sub-clause (b) has been amended</p> <p>(b) in adherence with the UK GDPR and Data Protection Act 2018;</p>	21 Submission of Learner Data

Section	Change	Clause Reference
Clause 21.1.1	Clause 21.1.1 sub-clause (f) has been added (f) any written request from the Department.	21 Submission of Learner Data
Clause 25.3	Clause 25.3 has been amended 25.3 During the period of three (3) months preceding the expiry of this Agreement or within 21 days after the Department or the Provider has given notice to terminate the Agreement, the Provider must, subject to the provisions of the UK GDPR and Data Protection Law , provide and thereafter keep updated at monthly intervals, to the Department and to the Successor Provider information equivalent to the Relevant Personnel Documentation and the Staffing Information in respect of each employee whom the Provider reasonably believes will be a Future Transferring Employee provided that prior to so doing the Successor Provider nominated by the Department will have executed in writing a confidentiality undertaking in favour of the Provider.	25 Re-provision of the Services
Clause 26	Clause 26 has been renamed 26 PAYMENT, FUNDING AND AUDIT	26 Payment, Funding and Audit
Clause 26.1	Clause 26.1 has been renamed 26.1 Payment, Funding and Audit provisions	26 Payment, Funding and Audit
Clause 26.1.7	Clause 26.1.7 has been amended	26 Payment, Funding and

Section	Change	Clause Reference
	<p>26.1.7 Where the Department identifies errors which it deems to be material in the data that the Provider is required to provide under the Agreement to support the payment of Funding, the Department reserves the right at its absolute discretion to require the Provider at the Provider's cost to carry out a 100% audit of all or part of the Services by a deadline specified by the Department and/or to require the Provider to repay Funding equivalent to the full amount of the Funding that has been wrongly claimed or paid. If only a sample of the Services has been audited, the Department reserves the right to calculate an error rate based on the said sample and claim repayment from the Provider of an extrapolated amount based on the error rate identified and the total value of the Funding paid to the Provider under this Agreement.</p>	<p>Audit</p>
<p>Clause 26.1.8</p>	<p>Clause 26.1.8 has been amended</p> <p>26.1.8 Without prejudice to any other provisions in this Agreement, at the Department's discretion, such amounts as are identified as being recoverable under Clause 26.1.7, may be recovered by making adjustments to data submitted by the Provider under the Agreement, or by raising an invoice for payment by the Provider, or by making deductions from future payments due to the Provider under the Agreement. Failure to settle such amounts by the Provider will constitute a Serious Breach under Clause 34 (Minor and Serious Breach) of this Agreement. The decision of the Department as to the amount of recovery under this Clause 26.1 (Payment, Funding and Audit provisions) is final.</p>	<p>26 Payment, Funding and Audit</p>
<p>Clauses 26.1.11 to</p>	<p>Clauses 26.1.11 to 26.1.14 have been added</p>	<p>26 Payment,</p>

Section	Change	Clause Reference
<p>26.1.14</p>	<p>26.1.11 Where the Department identifies that the allocated Funding has been miscalculated and that the Provider has been overpaid as a result, the Department will notify the Provider in writing of the amount of the overpayment, the date when the Department will seek to recover the Funding and the method of recovery such as being through an invoice or through setting off the overpayment against future payments of the Funding.</p> <p>26.1.12 If the Provider wants to make representations in relation to the notification it received in accordance with Clause 26.1.11, the Provider must put them in writing within 5 Working Days of the date the notification received from the Department. The Provider may make representations to the Department where it has incurred in good faith costs or liability in excess of the amount of allocated Funding that the Department has now notified as being the correct amount of Funding that the Provider should have been allocated.</p> <p>26.1.13 The Department will consider any representations made by the Provider in accordance with Clause 26.1.12 and issue the Provider with written notification of its final decision including the amount of overpayment of Funding to be repaid, the date when the Department will recover the Funding and the method of recovery. The Department will also set out the basis on which it has made its decision and shall include an amended Schedule 2 setting out the corrected Funding allocation.</p> <p>26.1.14 The decision of the Department as to the amount of recovery of Funding that it is due to it from the Provider is final.</p>	<p>Funding and Audit</p>
<p>Clause 28.2.3</p>	<p>Clause 28.2.3 sub-clause (e) has been added</p>	<p>28 Provider's</p>

Section	Change	Clause Reference
	(e) provision of any accounting records as referred to in Section 386 of the Companies Act 2006 and/or financial records as the Department may require which if the Provider is not a company may include similar accounting records as are referred to in Section 386 of the Companies Act 2006.	Records and Audit
Clause 29	Clause 29 has been renamed 29 SUBSIDY CONTROL	29 Subsidy Control
Clause 29.1	Clause 29.1 has been amended 29.1 The Provider should satisfy itself, if the Subsidy Control Rules apply to the Funding received in relation to the Services delivered under this Agreement. Guidance on this can be found at https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities	29 Subsidy Control
Clause 29.2	Clause 29.2 has been amended 29.2 Where the rules on Subsidy Control apply, the Provider will collect and retain appropriate records and will supply those records to the Department on its request.	29 Subsidy Control
Clause 29.5	Clause 29.5 has been amended 29.5 In the event that any funding paid under this Agreement is deemed to constitute unlawful subsidy control the Department reserves the right to require immediate repayment of any such funding.	29 Subsidy Control

Section	Change	Clause Reference
Clause 30	Clause 30 has been renamed 30 SUB-CONTRACTING	30 Sub-Contracting
Clauses 30.1 to 30.3	<p>Clauses 30.1 to 30.15.4 have been deleted and replaced with the Clauses 30.1 to 30.3</p> <p>30.1 The Provider may enter into Sub-Contracts provided it does so in compliance with Schedule 1 (Specification and Monitoring) and Schedule 9 (Sub-Contracting).</p> <p>30.2 Notwithstanding any arrangements the Provider has entered into with any Sub-Contractor, the Provider shall not be relieved or excused of responsibility or liability under this Agreement nor shall performance of its obligations be affected by the appointment of any Sub-Contractor.</p> <p>30.3 If the Provider does not Sub-Contract, the Provider must still provide a nil return via the Sub-Contractor Declaration to confirm this.</p>	30 Sub-Contracting
Clause 31.3.1	<p>Clause 31.3.1 has been amended</p> <p>31.3.1 Subject to Clause 31.9, an indemnity by either Party under any provision of this Agreement will be without limitation to any indemnity by that Party under any other provision of this Agreement.</p>	31 Indemnities and Liability
Clause 31.9.1	<p>Clause 31.9.1 has been amended</p> <p>31.9.1 Subject to Clauses 31.2 (Provider Not Responsible) and 31.8 (No Limit on Liability) the liability of the Provider for the Agreement Period will be Ten Million Pounds (£10,000,000) in</p>	31 Indemnities and Liability

Section	Change	Clause Reference
	aggregate in respect of all claims, losses or damages, whether arising under any indemnity from tort (including negligence), breach of Agreement or otherwise under or in connection with this Agreement.	
Clause 31.11.1	Clause 31.11.1 has been amended 31.11.1 With regard to the Department the total aggregate liability for the Agreement Period will be limited to its obligation to pay the Funding as and when it falls due in accordance with this Agreement.	31 Indemnities and Liability
Clause 33.3	Clause 33.3 has been amended 33.3 The Provider must not use any Funding provided by the Department under this Agreement for any of the purposes set out in paragraphs 15 and 16 of the Cabinet Office: Guidance for General Grants Grants-Standard-SIX-Grant-Agreements.pdf (publishing.service.gov.uk) .	33 Prohibited Acts
Clause 35.3.11	Clause 35.3.11 has been added 35.3.11 The Provider commits a Serious Breach of Clause 30.	35 Termination
Clause 35.3.12	Clause 35.3.12 has been added 35.3.12 The Provider commits a Serious Breach of Clause 33.3.	35 Termination
Clause 35.13	Clause 35.13 has been amended	35 Termination

Section	Change	Clause Reference
	35.13 The Provider must not recruit new Learners, including Learners that have transferred from another provider , after notice of termination of the Agreement has been given. The Department will not be liable to make payments in respect of any Learners recruited in breach of this clause.	
Clause 36.1.5	<p>Clause 36.1.5 has been added</p> <p>36.1.5 The termination or expiry of this Agreement shall be without prejudice to rights of either Party accrued prior to the Termination Date or Expiry Date and shall not affect the continuing rights of the Parties under any provision of the Agreement that either expressly or by implication has effect after the Termination Date or the Expiry Date.</p>	36 Consequences of Termination and Expiry
Clause 36.1.6	<p>Clause 36.1.6 has been added</p> <p>36.1.6 The Department reserves the right to retain Funding that would otherwise be paid to the Provider prior to the Expiry Date or Termination Date and/or to demand repayment of Funding, as relevant, in order to reconcile what has already been paid to the Provider under Schedule 2 (Payments) with the amount the Provider is entitled to under this Agreement (including the Funding Rules).</p>	36 Consequences of Termination and Expiry
Clause 36.1.7	<p>Clause 36.1.7 has been added</p> <p>36.1.7 Where this Agreement is terminated or expires, the Department may elect to take the role of Data Controller to secure and protect Learner Files, Learner Records and/or Evidence Packs, including e-portfolios until the Learner information can be transferred to a new Provider, the</p>	36 Consequences of Termination and Expiry

Section	Change	Clause Reference
	Learner, or destroyed in accordance with defined retention periods. If the Department elects to assume this role, the Provider shall co-operate fully to facilitate this.	
Clause 37.2	<p>Clause 37.2 has been amended</p> <p>37.2 On expiry or termination of this Agreement for any reason, the Provider shall do its utmost to minimise any disruption to Learners and shall co-operate fully with any reasonable requests made by the Department relating to this. For the avoidance of doubt the Department will be entitled to request that where the Provider cannot complete Learners that it will co-operate in transferring the Learners to a new provider even if this is prior to the Termination Date or Expiry Date of this Agreement and the Provider's Exit Plan should reflect this. The Department will not be liable for any costs prior to or after the Termination Date or Expiry Date incurred by the Provider in complying with this Clause 37.2.</p>	37 Exit Arrangements
Clause 37.5	<p>Clause 37.5 has been added</p> <p>37.5 If the Provider does not co-operate with the Department in relation to exit in accordance with this Clause 37 and the Department incurs additional expenditure of any description as a result, the Department reserves the right to require the Provider to reimburse the Department for this additional expenditure.</p>	37 Exit Arrangements
Clause 52.1.2	The reference to 'Audit Recovery' in the table at Clause 52.1.2 has been deleted and replaced with ' Payment, Funding and Audit '	52 Continuing Obligations
Clause 52.1.2	The reference to 'GDPR' in the table at Clause 52.1.2 has been amended to ' UK	52 Continuing

Section	Change	Clause Reference
	GDPR and Data Protection'	Obligations
Schedule 9	Schedule 9: Sub-Contracting has been added	Schedule 9: Sub-Contracting

Contract for Services

Section	Change	Clause Reference
“Controller”	Definition has been renamed and amended “ Data Controller ” takes the meaning given in the UK GDPR ;	1 Definitions
“Data”	Definition has been added	1 Definitions
“Data Subject”	Definition has been renamed and amended “Data Subject”, “ Process ” and “ Processing ” takes the meaning given in the UK GDPR ;	1 Definitions
“Data Subject Access Request”	Definition has been renamed “Data Subject Access Request” (SAR or DSAR)	1 Definitions
“Department Data”	The last paragraph has been amended including but not limited to ILR Data, e-portfolios and learner files ;	1 Definitions
“Earnings Adjustment	Definition has been added	1 Definitions

Section	Change	Clause Reference
Statement”		
“Exemption Case”	Definition has been added	1 Definitions
“Funding”	Definition has been added	1 Definitions
“Funding Stream”	Definition has been added	1 Definitions
“GDPR”	Definition has been amended to UK GDPR and all references to GDPR have been amended to UK GDPR	1 Definitions
“Good Industry Practice”	Definition has been amended means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.	1 Definitions
“ILR”	Definition has been added	1 Definitions
“Learner Files” / “Evidence Packs”	Definition has been renamed “Learner Files” / “ Learner Records ” / “Evidence Packs”	1 Definitions
“New Provider Monitoring Visit”	Definition has been renamed and amended “Ofsted Monitoring Visit” means an interim type of inspection carried out by Ofsted in accordance with the Further Education and Skills Inspection Handbook (Further education and skills inspection handbook - GOV.UK (www.gov.uk))	1 Definitions

Section	Change	Clause Reference
“Personal Data Requiring Sensitive Processing”	Definition has been added	1 Definitions
“Processor”	Definition has been renamed and amended “ Data Processor” takes the meaning given in the UK GDPR;	1 Definitions
“Processor Personnel”	Definition has been renamed “ Data Processor Personnel”	1 Definitions
“Services”	Definition has been amended means the services to be provided in accordance with the Funding Rules and the Specification (Schedule 1);	1 Definitions
“Sub-Contract”	Definition has been added	1 Definitions
“Sub-Contracting Threshold”	Definition has been added	1 Definitions
“Sub-Contractor”	Definition has been added	1 Definitions
“Sub-Processor”	Definition has been renamed “ Data Sub-Processor”	1 Definitions
Clause 7.1.1	Clause 7.1.1 has been amended	7 Performance Monitoring

Section	Change	Clause Reference
	7.1.1 The Contractor must put in place the necessary internal control framework, including an internal audit function if appropriate to ensure that it meets its obligations and those of its Sub-Contractors under this Contract.	
Clauses 9.11 to 9.11.3	<p>Clause 9.11 and sub-clauses 9.11.1 to 9.11.3 have been added</p> <p>9.11 Where it applies</p> <p>9.11.1 The Contractor must comply with the Modern Slavery Act 2015 and must have in place throughout the Contract Period policies and procedures to ensure full compliance.</p> <p>9.11.2 The Contractor must ensure that all Sub-Contracts that it enters into include an obligation for the Sub-Contractor to comply with the Modern Slavery Act 2015 with special emphasis on express anti-slavery and anti-human trafficking provisions.</p> <p>9.11.3 The Contractor shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain.</p>	9 Learner Welfare
Clause 11.8	<p>Clause 11.8 has been amended</p> <p>11.8 Where appropriate, the Contractor must confirm in writing to the Department that their (including Contractor Related Parties) Centre Approval Status for the relevant Services 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 Organisation name(s). The Contractor must notify the Department immediately in writing via the Contact Form: General Enquires at Education and Skills Funding Agency - GOV.UK</p>	11 Quality Assurance and Raising Standards

Section	Change	Clause Reference
	<p>www.gov.uk) if it receives any sanction from an Awarding Organisation, including but not limited to the suspension and/or removal of Centre Approval Status and/or the removal of the ability to register or certificate learners.</p>	
Clause 13.5	<p>Clause 13.5 sub-clause (c) has been amended</p> <p>(c) 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</p>	13 Inspections
Clause 13.9.1	<p>Clause 13.9.1 has been amended</p> <p>13.9.1 require the Contractor to, and the Contractor shall, accept and comply with additional Contract obligations relating to the improvement of the overall Provision within agreed timescales. Such conditions will include complying with the published recommendations of Ofsted. These conditions will apply until a full Ofsted inspection or further Ofsted Monitoring Visit of the Contractor has taken place; and/or</p>	13 Inspections
Clause 13.9.3	<p>Clause 13.9.3 has been amended</p> <p>13.9.3 require the Contractor to temporarily suspend the recruitment of Learners via a sub-contracting arrangement with another main provider or employer-provider; and/or</p>	13 Inspections
Clause 13.9.7	<p>Clause 13.9.7 has been added</p> <p>13.9.7 remove the Contractor from the Register of Apprenticeship Training Providers if the Contractor has two (2) consecutive Ofsted Monitoring</p>	13 Inspections

Section	Change	Clause Reference
	Visits each resulting in one or more “insufficient progress” judgements in relation to one or more themes.	
Clauses 13.11 to 13.12	Clauses 13.11 to 13.12 have been deleted	13 Inspections
Clause 15.2	<p>Clause 15.2 has been restructured to separate out Clauses 15.2.1 and 15.2.3. Clause 15.2.2 and the last paragraph of Clause 15.2 have been added.</p> <p>15.2 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract and payments made hereunder, the Department and /or its agents will have:</p> <p style="padding-left: 40px;">15.2.1 the right of access to the Contractor’s Premises (or that of any of its Sub-Contractors) at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records;</p> <p style="padding-left: 40px;">15.2.2 the right to require the Contractor to provide written authority to enable the Department to obtain such documents, records and/or information directly from third parties; and</p> <p style="padding-left: 40px;">15.2.3 the right to interview the Contractor’s servants or agents engaged with the delivery of the Contract.</p> <p>Failure to comply with this Clause 15.2 will constitute a Serious Breach of this Contract.</p>	15 Fraud and Irregularity
Clause 15.5	Clause 15.5 has been amended	15 Fraud and Irregularity

Section	Change	Clause Reference
	15.5 Where the Contractor is a registered or exempt charity, the Contractor will inform the Department of any schemes, orders or official warnings issued to them by the Charity Commission. Failure to inform the Department will constitute a Serious Breach of this Contract.	
Clause 16.2.1	Clause 16.2.1 has been amended 16.2.1 Subject to any obligation in respect of confidentiality, the UK GDPR and DPA 2018 and Confidential Information, the Parties will use all reasonable endeavours to provide and share information and data reasonably required by the other:	16 Relationships
Clause 19.2	Clause 19.2 has been added 19.2 Subject to Clause 19.3, the Parties agree that all rights, title and interest in any Foreground Intellectual Property Rights shall remain the property of Contractor.	19 Intellectual Property Rights
Clause 21.3	Clause 21.3 has been amended 21.3 The Contractor must take all necessary steps to ensure that any Department Data which comes into its possession or control is protected in accordance with the UK GDPR and DPA 2018 and appropriate security procedures as set out in Schedule 7 (Security & Department Policies) and in compliance with Good Industry Practice (having regard to the nature of its other obligations under this Contract and under the UK GDPR and DPA 2018).	21 Department Data
Clause 21.6.2	Clause 21.6.2 has been amended	21 Department Data

Section	Change	Clause Reference
	21.6.2 not disclose the Department Data to any third party, other than in accordance with the requirements of the UK GDPR and DPA 2018 for the purposes of fulfilling its obligations under this Contract, except with the prior written consent of the Department or as required by this Contract;	
Clause 22.19	<p>Clause 22.19 has been added</p> <p>22.19 In the circumstances set out in Clause 41.1.7, the Department may elect to take the role of Data Controller.</p>	22 Data Protection and Protection of Personal Data
Clause 23.1.1	<p>Clause 23.1.1 sub-clause (b) has been amended</p> <p>(b) in adherence with the UK GDPR and Data Protection Act 2018;</p>	23 Submission of Learner Data
Clause 23.1.1	<p>Clause 23.1.1 sub-clause (f) has been added</p> <p>(f) any written request from the Department.</p>	23 Submission of Learner Data
Clause 29.3	<p>Clause 29.3 has been amended</p> <p>29.3 During the period of three (3) months preceding the expiry of this Contract or within 21 days after the Department or the Contractor has given notice to terminate the Contract, the Contractor must, subject to the provisions of the UK GDPR and Data Protection Law, provide and thereafter keep updated at monthly intervals, to the Department and to the Successor Contractor information equivalent to the relevant personnel documentation and the Staffing Information in respect of each employee whom the Contractor reasonably believes will be a future</p>	29 Re-provision of the Services

Section	Change	Clause Reference
	transferring employee provided that prior to so doing the Successor Contractor nominated by the Department will have executed in writing a confidentiality undertaking in favour of the Contractor	
Clause 30	Clause 30 has been renamed 30 PAYMENT, FUNDING AND AUDIT	30 Payment, Funding and Audit
Clause 30.1	Clause 30.1 has been renamed 30.1 Payment, Funding and Audit provisions	30 Payment, Funding and Audit
Clause 30.1.7	Clause 30.1.7 has been amended 30.1.7 Where the Department identifies errors which it deems to be material in the data that the Contractor is required to provide under the Contract to support the payment of Funding, the Department reserves the right at its absolute discretion to require the Contractor at the Contractor's cost to carry out a 100% audit of all or part of the Services by a deadline specified by the Department and / or to require the Contractor to repay Funding equivalent to the full amount of the Funding that has been wrongly claimed or paid. If only a sample of the Services has been audited, the Department reserves the right to calculate an error rate based on the said sample and claim repayment from the Contractor of an extrapolated amount based on the error rate identified and the total value of the Funding paid to the Contractor under this Contract.	30 Payment, Funding and Audit
Clause 30.1.8	Clause 30.1.8 has been amended	30 Payment, Funding and

Section	Change	Clause Reference
	<p>30.1.8 Without prejudice to any other provisions in this Contract, at the Department's discretion, such amounts as are identified as being recoverable under Clause 30.1.7, 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 by 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 39 (Minor and Serious Breach) of this Contract. The decision of the Department as to the amount of recovery under this Clause 30.1 (Payment, Funding and Audit provisions) is final.</p>	Audit
Clause 32.2.3	<p>Clause 32.2.3 sub-clause (e) has been added</p> <p>(e) provision of any accounting records as referred to in Section 386 of the Companies Act 2006 and/or financial records as the Department may require which if the Contractor is not a company may include similar accounting records as are referred to in Section 386 of the Companies Act 2006.</p>	32 Contractor's Records and Audit
Clause 33	<p>Clause 33 has been renamed</p> <p>33 SUBSIDY CONTROL</p>	33 Subsidy Control
Clause 33.1	<p>Clause 33.1 has been amended</p> <p>33.1 The Contractor should satisfy itself, if the Subsidy Control Rules apply to the Funding received in relation to the Services delivered under this Contract. Guidance on this can be found at https://www.gov.uk/government/publications/complying-with-the-</p>	33 Subsidy Control

Section	Change	Clause Reference
	<u>uks-international-obligations-on-subsidy-control-guidance-for-public-authorities.</u>	
Clause 33.2	<p>Clause 33.2 has been amended</p> <p>33.2 Where the rules on Subsidy Control apply, the Contractor will collect and retain appropriate records and will supply those records to the Department on its request.</p>	33 Subsidy Control
Clause 33.5	<p>Clause 33.5 has been amended</p> <p>33.5 In the event that any funding paid under this Contract is deemed to constitute unlawful subsidy control the Department reserves the right to require immediate repayment of any such funding.</p>	33 Subsidy Control
Clause 34	<p>Clause 34 has been renamed</p> <p>34 SUB-CONTRACTING</p>	34 Sub-Contracting
Clauses 34.1 to 34.3	<p>Clauses 34.1 to 34.15.4 have been deleted and replaced with the Clauses 34.1 to 34.3</p> <p>34.1 The Contractor may enter into Sub-Contracts provided it does so in compliance with Schedule 1 (Specification and Monitoring) and Schedule 9 (Sub-Contracting).</p> <p>34.2 Notwithstanding any arrangements the Contractor has entered into with any Sub-Contractor, the Contractor shall not be relieved or excused of responsibility or liability under this Contract nor shall performance of its obligations be affected by the appointment of any Sub-Contractor.</p> <p>34.3 If the Contractor does not Sub-Contract, the Contractor must still provide</p>	34 Sub-Contracting

Section	Change	Clause Reference
	a nil return via the Subcontractor Declaration to confirm this.	
Clause 35.3.1	<p>Clause 35.3.1 has been amended</p> <p>35.3.1 Subject to Clause 35.9, an indemnity by either Party under any provision of this Contract will be without limitation to any indemnity by that Party under any other provision of this Contract.</p>	35 Indemnities and Liability
Clause 35.9.1	<p>Clause 35.9.1 has been amended</p> <p>35.9.1 Subject to Clause 35.2 (Contractor Not Responsible) and 35.8 (No Limit on Liability) the liability of the Contractor for the Contract Period will be Ten Million Pounds (£10,000,000) in aggregate in respect of all claims, losses or damages, whether arising under any indemnity from tort (including negligence), breach of contract or otherwise under or in connection with this Contract.</p>	35 Indemnities and Liability
Clause 35.11.1	<p>Clause 35.11.1 has been amended</p> <p>35.11.1 With regard to the Department the total aggregate liability for the Contract Period will be one million pounds (£1,000,000) and for the avoidance of doubt, this will be in addition to:</p> <ul style="list-style-type: none"> (a) its obligation to pay the Funding as and when it falls due in accordance with this Contract; and (b) any pension liability which becomes payable in accordance with the Annex to Part B of Schedule 5 (TUPE) and is claimed. 	35 Indemnities and Liability
Clause 38.3	Clause 38.3 has been amended	38 Prohibited Acts

Section	Change	Clause Reference
	38.3 The Contractor must not use any Funding provided by the Department under this Contract for any of the purposes set out in paragraphs 15 and 16 of the Cabinet Office: Guidance for General Grants Grants-Standard-SIX-Grant-Agreements.pdf (publishing.service.gov.uk) .	
Clause 40.4.12	Clause 40.4.12 has been added 40.4.12 The Contractor commits a Serious Breach of Clause 34; and/or	40 Termination
Clause 40.4.13	Clause 40.4.13 has been added 40.4.13 The Contractor commits a Serious Breach of Clause 38.3.	40 Termination
Clause 40.14	Clause 40.14 has been amended 40.14 The Contractor must not recruit new Learners, including Learners that have transferred from another provider , after notice of termination of the Contract has been given. The Department will not be liable to make payments in respect of any Learners recruited in breach of this clause.	40 Termination
Clause 41.1.5	Clause 41.1.5 has been added 41.1.5 The termination or expiry of this Contract shall be without prejudice to rights of either Party accrued prior to the Termination Date or Expiry Date and shall not affect the continuing rights of the Parties under any provision of the Contract that either expressly or by implication has effect after the Termination Date or the Expiry Date.	41 Consequences of Termination and Expiry
Clause 41.1.6	Clause 41.1.6 has been added 41.1.6 The Department reserves the right to retain Funding that would otherwise	41 Consequences of Termination

Section	Change	Clause Reference
	<p>be paid to the Contractor prior to the Expiry Date or Termination Date and/or to demand repayment of Funding, as relevant, in order to reconcile what has already been paid to the Contractor under Schedule 2 (Payments) with the amount the Contractor is entitled to under this Contract (including the Funding Rules).</p>	<p>and Expiry</p>
Clause 41.1.7	<p>Clause 41.1.7 has been added</p> <p>41.1.7 Where this Contract is terminated or expires, the Department may elect to take the role of Data Controller to secure and protect Learner Files, Learner Records and/or Evidence Packs, including e-portfolios until the Learner information can be transferred to a new Contractor, the Learner, or destroyed in accordance with defined retention periods. If the Department elects to assume this role, the Contractor shall co-operate fully to facilitate this.</p>	<p>41 Consequences of Termination and Expiry</p>
Clause 42.2	<p>Clause 42.2 has been amended</p> <p>42.2 On expiry or termination of this Contract for any reason, the Contractor shall do its utmost to minimise any disruption to Learners and shall co-operate fully with any reasonable requests made by the Department relating to this. For the avoidance of doubt the Department will be entitled to request that where the Contractor cannot complete Learners that it will co-operate in transferring the Learners to a new provider even if this is prior to the Termination Date or Expiry Date of this Contract and the Contractor's Exit Plan should reflect this. The Department will not be liable for any costs prior to or after the Termination Date or Expiry Date incurred by the Contractor in complying with this Clause 42.2.</p>	<p>42 Exit Arrangements</p>

Section	Change	Clause Reference
Clause 42.5	<p>Clause 42.5 has been added</p> <p>42.5 If the Contractor does not co-operate with the Department in relation to exit in accordance with this Clause 42 and the Department incurs additional expenditure of any description as a result, the Department reserves the right to require the Contractor to reimburse the Department for this additional expenditure.</p>	42 Exit Arrangements
Clause 57.1.2	The reference to 'Audit Recovery' in the table at Clause 57.1.2 has been deleted and replaced with ' Payment, Funding and Audit '	57 Continuing Obligations
Clause 57.1.2	The reference to 'GDPR' in the table at Clause 57.1.2 has been amended to ' UK GDPR and Data Protection '	57 Continuing Obligations
Paragraph 3	<p>Paragraph 3 has been amended</p> <p>3 The Department may implement a Change on giving the Contractor reasonable notice provided that such Change does not amount to a Material Change that extends the scope of the Service(s).</p>	Schedule 3: Change Control Procedure
Paragraphs 4 and 5	<p>Paragraphs 4 and 5 have been added</p> <p>4 If a Change amounts to a Material Change, the Department will give the Contractor written notice of the proposed Material Change and will give the Contractor 10 Working Days to respond to the Department with any comments including on the scope of the proposed Material Change and any impact on the Funding.</p>	Schedule 3: Change Control Procedure

Section	Change	Clause Reference
	5 The Department will consider any comments made by the Contractor under paragraph 4 and will notify the Contractor of whether or not it intends to implement the Material Change and if it does, of the terms of the Material Change. The Department's decision in relation to a Change is final.	
1 Definitions	The following paragraph has been added In addition to the Definitions contained in Clause 1 (Definitions) of this Contract, in this Schedule 5 (TUPE), the following definitions will apply:	Schedule 5: TUPE
Various paragraphs	The references to 'Supplier' have been deleted and replaced with ' Contractor '	Schedule 5: TUPE
Schedule 9	Schedule 9: Sub-Contracting has been added	Schedule 9: Sub-Contracting

Conditions of Funding (Grant) (Local Authorities)

Section	Change	Clause Reference
"Controller"	Definition has been renamed and amended " Data Controller" takes the meaning given in the UK GDPR;	1 Definitions
"Data"	Definition has been added	1 Definitions
"Data Subject"	Definition has been renamed and amended "Data Subject", " Process " and " Processing " takes the meaning given in the	1 Definitions

Section	Change	Clause Reference
	UK GDPR;	
“Data Subject Access Request”	Definition has been renamed “Data Subject Access Request” (SAR or DSAR)	1 Definitions
“Department Data”	The last paragraph has been amended including but not limited to ILR Data, e-portfolios and learner files;	1 Definitions
“Earnings Adjustment Statement”	Definition has been added	1 Definitions
“Exemption Case”	Definition has been added	1 Definitions
“Funding”	Definition has been added	1 Definitions
“Funding Stream”	Definition has been added	1 Definitions
“GDPR”	Definition has been amended to UK GDPR and all references to GDPR have been amended to UK GDPR	1 Definitions
“Good Industry Practice”	Definition has been amended means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;	1 Definitions
“ILR”	Definition has been added	1 Definitions

Section	Change	Clause Reference
“Learner Files” / “Evidence Packs”	Definition has been renamed “Learner Files” / “ Learner Records ” / “Evidence Packs”	1 Definitions
“New Provider Monitoring Visit”	Definition has been renamed and amended “Ofsted Monitoring Visit” means an interim type of inspection carried out by Ofsted in accordance with the Further Education and Skills Inspection Handbook (Further education and skills inspection handbook - GOV.UK (www.gov.uk))	1 Definitions
“Personal Data Requiring Sensitive Processing”	Definition has been added	1 Definitions
“Processor”	Definition has been renamed and amended “ Data Processor” takes the meaning given in the UK GDPR;	1 Definitions
“Processor Personnel”	Definition has been renamed “ Data Processor Personnel”	1 Definitions
“Services”	Definition has been amended means the services to be provided in accordance with the Funding Rules and the Specification (Schedule 1);	1 Definitions
“Sub-Contract”	Definition has been added	1 Definitions
“Sub-Contracting	Definition has been added	1 Definitions

Section	Change	Clause Reference
Threshold”		
“Sub-Contractor”	Definition has been added	1 Definitions
“Sub-Processor”	Definition has been renamed “Data Sub-Processor”	1 Definitions
Clause 5.1.1	Clause 5.1.1 has been amended 5.1.1 The Provider must put in place the necessary internal control framework, including an internal audit function if appropriate to ensure that it meets its obligations and those of its Sub-Contractors under this Agreement.	5 Performance Monitoring
Clauses 8.12 to 8.12.3	Clause 8.12 and sub-clauses 8.12.1 to 8.12.3 have been added 8.12 Where it applies 8.12.1 The Provider must comply with the Modern Slavery Act 2015 and must have in place throughout the Agreement Period policies and procedures to ensure full compliance. 8.12.2 The Provider must ensure that all Sub-Contracts that it enters into include an obligation for the Sub-Contractor to comply with the Modern Slavery Act 2015 with special emphasis on express anti-slavery and anti-human trafficking provisions. 8.12.3 The Provider shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain.	8 Learner Welfare

Section	Change	Clause Reference
<p>Clause 10.9</p>	<p>Clause 10.9 has been amended</p> <p>10.9 Where appropriate, the Provider must confirm in writing to the Department that their (including Provider Related Parties) Centre Approval Status for the relevant Services 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 Organisation name(s). The Provider must notify the Department immediately in writing via the Contact Form: General Enquires at Education and Skills Funding Agency - GOV.UK (www.gov.uk) if it receives any sanction from an Awarding Organisation, including but not limited to the suspension and/or removal of Centre Approval Status and/or the removal of the ability to register or certificate learners.</p>	<p>10 Quality Assurance and Raising Standards</p>
<p>Clause 12.6.3</p>	<p>Clause 12.6.3 has been amended</p> <p>12.6.3 give consideration to the Services which are assessed as inadequate in its allocations when finalising the amount of Funding in any subsequent Agreements between the Parties; and/or</p>	<p>12 Inspections</p>
<p>Clause 12.10.1</p>	<p>Clause 12.10.1 has been amended</p> <p>12.10.1 require the Provider to, and the Provider shall, accept and comply with additional conditions of funding relating to the improvement of the overall Services within agreed timescales. Such conditions will include complying with the published recommendations of Ofsted. These conditions will apply until a</p>	<p>12 Inspections</p>

Section	Change	Clause Reference
	full Ofsted inspection or further Ofsted Monitoring Visit of the Provider has taken place; and/or	
Clause 12.10.3	Clause 12.10.3 has been amended 12.10.3 require the Provider to temporarily suspend the recruitment of Learners via a sub-contracting arrangement with another main provider or employer-provider; and/or	12 Inspections
Clause 12.10.7	Clause 12.10.7 has been added 12.10.7 remove the Provider from the Register of Apprenticeship Training Providers if the Provider has two (2) consecutive Ofsted Monitoring Visits each resulting in one or more “insufficient progress” judgements in relation to one or more themes.	12 Inspections
Clauses 12.12 to 12.13	Clauses 12.12 to 12.13 have been deleted	12 Inspections
Clause 14.2	Clause 14.2 has been restructured to separate out Clauses 14.2.1 and 14.2.3. Clause 14.2.2 and the last paragraph of Clause 14.2 have been added. 14.2 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and payments made hereunder, the Department and/or its agents will have: 14.2.1 the right of access to the Provider’s Premises (or that of any of its Sub-Contractors) at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records;	14 Fraud and Irregularity

Section	Change	Clause Reference
	<p>14.2.2 the right to require the Provider to provide written authority to enable the Department to obtain such documents, records and/or information directly from third parties; and</p> <p>14.2.3 the right to interview the Provider's servants or agents engaged with the delivery of the Agreement.</p> <p>Failure to comply with this Clause 14.2 will constitute a Serious Breach of this Agreement.</p>	
Clause 14.5	<p>Clause 14.5 has been amended</p> <p>14.5 Where the Provider is a registered or exempt charity, the Provider will inform the Department of any schemes, orders or official warnings issued to them by the Charity Commission. Failure to inform the Department will constitute a Serious Breach of this Agreement.</p>	14 Fraud and Irregularity
Clause 15.1.1	<p>Clause 15.1.1 has been amended</p> <p>15.1.1 Subject to any obligation in respect of confidentiality, the UK GDPR and DPA 2018 and Confidential Information, the Parties will use all reasonable endeavours to provide and share information and data reasonably required by the other:</p>	15 Relationships
Clause 19.3	<p>Clause 19.3 has been amended</p> <p>19.3 The Provider must take all necessary steps to ensure that any Department Data which comes into its possession or control is protected in accordance with the UK GDPR and DPA 2018 and appropriate security procedures as set out in Schedule 7 (Security & Department Policies) and in compliance with Good Industry Practice (having regard to the nature of</p>	19 Department Data

Section	Change	Clause Reference
	its other obligations under this Agreement and under the UK GDPR and DPA 2018).	
Clause 19.6.2	<p>Clause 19.6.2 has been amended</p> <p>19.6.2 not disclose the Department Data to any third party, other than in accordance with the requirements of the UK GDPR and DPA 2018 for the purposes of fulfilling its obligations under this Agreement, except with the prior written consent of the Department or as required by this Agreement;</p>	19 Department Data
Clause 20.20	<p>Clause 20.20 has been added</p> <p>20.20 In the circumstances set out in Clause 36.1.7, the Department may elect to take the role of Data Controller.</p>	20 Data Protection and Protection of Personal Data
Clause 21.2.1	<p>Clause 21.2.1 sub-clause (b) has been amended</p> <p>(b) in adherence with the UK GDPR and Data Protection Act 2018;</p>	21 Submission of Learner Data
Clause 21.2.1	<p>Clause 21.2.1 sub-clause (f) has been added</p> <p>(f) any written request from the Department.</p>	21 Submission of Learner Data
Clause 25.3	<p>Clause 25.3 has been amended</p> <p>25.3 During the period of three (3) months preceding the expiry of this Agreement or within 21 days after the Department or the Provider has given notice to terminate the Agreement, the Provider must, subject to the</p>	25 Re-provision of the Services

Section	Change	Clause Reference
	<p>provisions of the UK GDPR and Data Protection Law, provide and thereafter keep updated at monthly intervals, to the Department and to the Successor Provider information equivalent to the Relevant Personnel Documentation and the Staffing Information in respect of each employee whom the Provider reasonably believes will be a Future Transferring Employee provided that prior to so doing the Successor Provider nominated by the Department will have executed in writing a confidentiality undertaking in favour of the Provider.</p>	
Clause 26	<p>Clause 26 has been renamed PAYMENT, FUNDING AND AUDIT</p>	<p>26 Payment, Funding and Audit</p>
Clause 26.1	<p>Clause 26.1 has been renamed Payment, Funding and Audit provisions</p>	<p>26 Payment, Funding and Audit</p>
Clause 26.1.7	<p>Clause 26.1.7 has been amended 26.1.7 Where the Department identifies errors which it deems to be material in the data that the Provider is required to provide under the Agreement to support the payment of Funding, the Department reserves the right at its absolute discretion to require the Provider at the Provider's cost to carry out a 100% audit of all or part of the Services by a deadline specified by the Department and/or to require the Provider to repay Funding equivalent to the full amount of the Funding that has been wrongly claimed or paid. If only a sample of the Services has been audited, the Department reserves the right to calculate an error rate based</p>	<p>26 Payment, Funding and Audit</p>

Section	Change	Clause Reference
	<p>on the said sample and claim repayment from the Provider of an extrapolated amount based on the error rate identified and the total value of the Funding paid to the Provider under this Agreement.</p>	
<p>Clause 26.1.8</p>	<p>Clause 26.1.8 has been amended</p> <p>26.1.8 Without prejudice to any other provisions in this Agreement, at the Department's discretion, such amounts as are identified as being recoverable under Clause 26.1.7, may be recovered by making adjustments to data submitted by the Provider under the Agreement, or by raising an invoice for payment by the Provider, or by making deductions from future payments due to the Provider under the Agreement. Failure to settle such amounts by the Provider will constitute a Serious Breach under Clause 34 (Minor and Serious Breach) of this Agreement. The decision of the Department as to the amount of recovery under this Clause 26.1 (Payment, Funding and Audit provisions) is final.</p>	<p>26 Payment, Funding and Audit</p>
<p>Clauses 26.1.11 to 26.1.14</p>	<p>Clauses 26.1.11 to 26.1.14 have been added</p> <p>26.1.11 Where the Department identifies that the allocated Funding has been miscalculated and that the Provider has been overpaid as a result, the Department will notify the Provider in writing of the amount of the overpayment, the date when the Department will seek to recover the Funding and the method of recovery such as being through an invoice or through setting off the overpayment against future payments of the Funding.</p> <p>26.1.12 If the Provider wants to make representations in relation to the notification it received in accordance with Clause 26.1.11, the</p>	<p>26 Payment, Funding and Audit</p>

Section	Change	Clause Reference
	<p>Provider must put them in writing within 5 Working Days of the date the notification received from the Department. The Provider may make representations to the Department where it has incurred in good faith costs or liability in excess of the amount of allocated Funding that the Department has now notified as being the correct amount of Funding that the Provider should have been allocated.</p> <p>26.1.13 The Department will consider any representations made by the Provider in accordance with Clause 26.1.12 and issue the Provider with written notification of its final decision including the amount of overpayment of Funding to be repaid, the date when the Department will recover the Funding and the method of recovery. The Department will also set out the basis on which it has made its decision and shall include an amended Schedule 2 setting out the corrected Funding allocation.</p> <p>26.1.14 The decision of the Department as to the amount of recovery of Funding that it is due to it from the Provider is final.</p>	
Clause 28.2.3	<p>Clause 28.2.3 sub-clause (e) has been added</p> <p>(e) provision of any accounting records as referred to in Section 386 of the Companies Act 2006 and/or financial records as the Department may require which if the Provider is not a company may include similar accounting records as are referred to in Section 386 of the Companies Act 2006.</p>	28 Provider's Records and Audit
Clause 29	Clause 29 has been renamed	29 Subsidy Control

Section	Change	Clause Reference
	29 SUBSIDY CONTROL	
Clause 29.2	<p>Clause 29.2 has been amended</p> <p>29.2 The Provider should satisfy itself, if the Subsidy Control Rules apply to the Funding received in relation to the Services delivered under this Agreement. Guidance on this can be found at https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities</p>	29 Subsidy Control
Clause 29.3	<p>Clause 29.3 has been amended</p> <p>29.3 Where the rules on Subsidy Control apply, the Provider will collect and retain appropriate records and will supply those records to the Department on its request.</p>	29 Subsidy Control
Clause 29.6	<p>Clause 29.6 has been amended</p> <p>29.6 In the event that any funding paid under this Agreement is deemed to constitute unlawful subsidy control the Department reserves the right to require immediate repayment of any such funding.</p>	29 Subsidy Control
Clause 30	<p>Clause 30 has been renamed</p> <p>30 SUB-CONTRACTING</p>	30 Sub-Contracting
Clauses 30.1 to 30.3	<p>Clauses 30.1 to 30.15.4 have been deleted and replaced with the Clauses 30.1 to 30.3</p>	30 Sub-Contracting

Section	Change	Clause Reference
	<p>30.1 The Provider may enter into Sub-Contracts provided it does so in compliance with Schedule 1 (Specification and Monitoring) and Schedule 9 (Sub-Contracting).</p> <p>30.2 Notwithstanding any arrangements the Provider has entered into with any Sub-Contractor, the Provider shall not be relieved or excused of responsibility or liability under this Agreement nor shall performance of its obligations be affected by the appointment of any Sub-Contractor.</p> <p>30.3 If the Provider does not Sub-Contract, the Provider must still provide a nil return via the Subcontractor Declaration to confirm this.</p>	
Clause 31.3.1	<p>Clause 31.3.1 has been amended</p> <p>31.3.1 Subject to Clause 31.9, an indemnity by either Party under any provision of this Agreement will be without limitation to any indemnity by that Party under any other provision of this Agreement.</p>	31 Indemnities and Liability
Clause 31.9.1	<p>Clause 31.9.1 has been amended</p> <p>31.9.1 Subject to Clauses 31.2 (Provider Not Responsible) and 31.8 (No Limit on Liability) the liability of the Provider for the Agreement Period will be Ten Million Pounds (£10,000,000) in aggregate in respect of all claims, losses or damages, whether arising under any indemnity from tort (including negligence), breach of Agreement or otherwise under or in connection with this Agreement.</p>	31 Indemnities and Liability
Clause 31.11.1	Clause 31.11.1 has been amended	31 Indemnities and

Section	Change	Clause Reference
	31.11.1 With regard to the Department the total aggregate liability for the Agreement Period will be limited to its obligation to pay the Funding as and when it falls due in accordance with this Agreement.	Liability
Clause 33.3	Clause 33.3 has been amended 33.3 The Provider must not use any Funding provided by the Department under this Agreement for any of the purposes set out in paragraphs 15 and 16 of the Cabinet Office: Guidance for General Grants Grants-Standard-SIX-Grant-Agreements.pdf (publishing.service.gov.uk) .	33 Prohibited Acts
Clause 35.3.10	Clause 35.3.10 has been added 35.3.10 The Provider commits a Serious Breach of Clause 30.	35 Termination
Clause 35.3.11	Clause 35.3.11 has been added 35.3.11 The Provider commits a Serious Breach of Clause 33.3.	35 Termination
Clause 35.13	Clause 35.13 has been amended 35.13 The Provider must not recruit new Learners, including Learners that have transferred from another provider , after notice of termination of the Agreement has been given. The Department will not be liable to make payments in respect of any Learners recruited in breach of this clause.	35 Termination
Clause 36.1.5	Clause 36.1.5 has been added	36 Consequences

Section	Change	Clause Reference
	<p>36.1.5 The termination or expiry of this Agreement shall be without prejudice to rights of either Party accrued prior to the Termination Date or Expiry Date and shall not affect the continuing rights of the Parties under any provision of the Agreement that either expressly or by implication has effect after the Termination Date or the Expiry Date.</p>	<p>of Termination and Expiry</p>
Clause 36.1.6	<p>Clause 36.1.6 has been added</p> <p>36.1.6 The Department reserves the right to retain Funding that would otherwise be paid to the Provider prior to the Expiry Date or Termination Date and/or to demand repayment of Funding, as relevant, in order to reconcile what has already been paid to the Provider under Schedule 2 (Payments) with the amount the Provider is entitled to under this Agreement (including the Funding Rules).</p>	<p>36 Consequences of Termination and Expiry</p>
Clause 36.1.7	<p>Clause 36.1.7 has been added</p> <p>36.1.7 Where this Agreement is terminated or expires, the Department may elect to take the role of Data Controller to secure and protect Learner Files, Learner Records and/or Evidence Packs, including e-portfolios until the Learner information can be transferred to a new Provider, the Learner, or destroyed in accordance with defined retention periods. If the Department elects to assume this role, the Provider shall co-operate fully to facilitate this.</p>	<p>36 Consequences of Termination and Expiry</p>
Clause 37.3	<p>Clause 37.3 has been amended</p>	<p>37 Exit</p>

Section	Change	Clause Reference
	<p>37.3 On expiry or termination of this Agreement for any reason, the Provider shall do its utmost to minimise any disruption to Learners and shall co-operate fully with any reasonable requests made by the Department relating to this. For the avoidance of doubt the Department will be entitled to request that where the Provider cannot complete Learners that it will co-operate in transferring the Learners to a new provider even if this is prior to the Termination Date or Expiry Date of this Agreement and the Provider's Exit Plan should reflect this. The Department will not be liable for any costs prior to or after the Termination Date or Expiry Date incurred by the Provider in complying with this Clause 37.3.</p>	Arrangements
Clause 37.6	<p>Clause 37.6 has been added</p> <p>37.6 If the Provider does not co-operate with the Department in relation to exit in accordance with this Clause 37 and the Department incurs additional expenditure of any description as a result, the Department reserves the right to require the Provider to reimburse the Department for this additional expenditure.</p>	37 Exit Arrangements
Clause 52.1.2	The reference to 'Audit Recovery' in the table at Clause 52.1.2 has been deleted and replaced with ' Payment, Funding and Audit '	52 Continuing Obligations
Clause 52.1.2	The reference to 'GDPR' in the table at Clause 52.1.2 has been amended to ' UK GDPR and Data Protection '	52 Continuing Obligations
Schedule 9	Schedule 9: Sub-Contracting has been added	Schedule 9: Sub-Contracting

Conditions of Funding (Grant) (Trusts)

Section	Change	Clause Reference
“Controller”	Definition has been renamed and amended “Data Controller” takes the meaning given in the UK GDPR;	1 Definitions
“Data”	Definition has been added	1 Definitions
“Data Subject”	Definition has been renamed and amended “Data Subject”, “Process” and “Processing” takes the meaning given in the UK GDPR;	1 Definitions
“Data Subject Access Request”	Definition has been renamed “Data Subject Access Request” (SAR or DSAR)	1 Definitions
“Department Data”	The last paragraph has been amended including but not limited to ILR Data, e-portfolios and learner files;	1 Definitions
“Earnings Adjustment Statement”	Definition has been added	1 Definitions
“Exemption Case”	Definition has been added	1 Definitions
“Funding”	Definition has been added	1 Definitions
“Funding Stream”	Definition has been added	1 Definitions
“GDPR”	Definition has been amended to UK GDPR and all references to GDPR have	1 Definitions

Section	Change	Clause Reference
	been amended to UK GDPR	
“Good Industry Practice”	Definition has been amended means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;	1 Definitions
“ILR”	Definition has been added	1 Definitions
“Learner Files” / “Evidence Packs”	Definition has been renamed “Learner Files” / “ Learner Records ” / “Evidence Packs”	1 Definitions
“New Provider Monitoring Visit”	Definition has been renamed and amended “Ofsted Monitoring Visit” means an interim type of inspection carried out by Ofsted in accordance with the Further Education and Skills Inspection Handbook (Further education and skills inspection handbook - GOV.UK (www.gov.uk))	1 Definitions
“Personal Data Requiring Sensitive Processing”	Definition has been added	1 Definitions
“Processor”	Definition has been renamed and amended “ Data Processor” takes the meaning given in the UK GDPR;	1 Definitions
“Processor Personnel”	Definition has been renamed “ Data Processor Personnel”	1 Definitions
“Services”	Definition has been amended	1 Definitions

Section	Change	Clause Reference
	means the services to be provided in accordance with the Funding Rules and the Specification (Schedule 1);	
“Sub-Contract”	Definition has been added	1 Definitions
“Sub-Contracting Threshold”	Definition has been added	1 Definitions
“Sub-Contractor”	Definition has been added	1 Definitions
“Sub-Processor”	Definition has been renamed “ Data Sub-Processor”	1 Definitions
Clause 5.1.1	Clause 5.1.1 has been amended 5.1.1 The Provider must put in place the necessary internal control framework, including an internal audit function if appropriate to ensure that it meets its obligations and those of its Sub-Contractors under this Agreement.	5 Performance Monitoring
Clauses 8.11 to 8.11.3	Clause 8.11 and sub-clauses 8.11.1 to 8.11.3 have been added 8.11 Where it applies 8.11.1 The Provider must comply with the Modern Slavery Act 2015 and must have in place throughout the Agreement Period policies and procedures to ensure full compliance. 8.11.2 The Provider must ensure that all Sub-Contracts that it enters into include an obligation for the Sub-Contractor to comply with	8 Learner Welfare

Section	Change	Clause Reference
	<p>the Modern Slavery Act 2015 with special emphasis on express anti-slavery and anti-human trafficking provisions.</p> <p>8.11.3 The Provider shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain.</p>	
Clause 10.8	<p>Clause 10.8 has been amended</p> <p>10.8 Where appropriate, the Provider must confirm in writing to the Department that their (including Provider Related Parties) Centre Approval Status for the relevant Services 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 Organisation name(s). The Provider must notify the Department immediately in writing via the Contact Form: General Enquires at Education and Skills Funding Agency - GOV.UK (www.gov.uk) if it receives any sanction from an Awarding Organisation, including but not limited to the suspension and/or removal of Centre Approval Status and/or the removal of the ability to register or certificate learners.</p>	10 Quality Assurance and Raising Standards
Clause 12.5.3	<p>Clause 12.5.3 has been amended</p> <p>12.5.3 give consideration to the Services which are assessed as inadequate in its allocations when finalising the amount of Funding in any subsequent Agreements between the Parties; and/or</p>	12 Inspections
Clause 12.9.1	<p>Clause 12.9.1 has been amended</p> <p>12.9.1 require the Provider to, and the Provider shall, accept and comply with</p>	12 Inspections

Section	Change	Clause Reference
	<p>additional conditions of funding relating to the improvement of the overall Services within agreed timescales. Such conditions will include complying with the published recommendations of Ofsted. These conditions will apply until a full Ofsted inspection or further Ofsted Monitoring Visit of the Provider has taken place; and/or</p>	
Clause 12.9.3	<p>Clause 12.9.3 has been amended</p> <p>12.9.3 require the Provider to temporarily suspend the recruitment of Learners via a sub-contracting arrangement with another main provider or employer-provider; and/or</p>	12 Inspections
Clause 12.9.7	<p>Clause 12.9.7 has been added</p> <p>12.9.7 remove the Provider from the Register of Apprenticeship Training Providers if the Provider has two (2) consecutive Ofsted Monitoring Visits each resulting in one or more “insufficient progress” judgements in relation to one or more themes.</p>	12 Inspections
Clauses 12.11 to 12.12	<p>Clauses 12.11 to 12.12 have been deleted</p>	12 Inspections
Clause 14.2	<p>Clause 14.2 has been restructured to separate out Clauses 14.2.1 and 14.2.3. Clause 14.2.2 and the last paragraph of Clause 14.2 have been added.</p> <p>14.2 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and payments made hereunder, the Department and/or its agents will have:</p> <p>14.2.1 the right of access to the Provider’s Premises (or that of any of its Sub-Contractors) at any reasonable time with or without notice to</p>	14 Fraud and Irregularity

Section	Change	Clause Reference
	<p>examine and remove or copy all relevant documents and records including electronic records;</p> <p>14.2.2 the right to require the Provider to provide written authority to enable the Department to obtain such documents, records and/or information directly from third parties; and</p> <p>14.2.3 the right to interview the Provider’s servants or agents engaged with the delivery of the Agreement.</p> <p>Failure to comply with this Clause 14.2 will constitute a Serious Breach of this Agreement.</p>	
Clause 14.5	<p>Clause 14.5 has been amended</p> <p>14.5 Where the Provider is a registered or exempt charity, the Provider will inform the Department of any schemes, orders or official warnings issued to them by the Charity Commission. Failure to inform the Department will constitute a Serious Breach of this Agreement.</p>	14 Fraud and Irregularity
Clause 15.1.1	<p>Clause 15.1.1 has been amended</p> <p>15.1.1 Subject to any obligation in respect of confidentiality, the UK GDPR and DPA 2018 and Confidential Information, the Parties will use all reasonable endeavours to provide and share information and data reasonably required by the other:</p>	15 Relationships
Clause 19.3	<p>Clause 19.3 has been amended</p> <p>19.3 The Provider must take all necessary steps to ensure that any Department Data which comes into its possession or control is protected in</p>	19 Department Data

Section	Change	Clause Reference
	accordance with the UK GDPR and DPA 2018 and appropriate security procedures as set out in Schedule 7 (Security & Department Policies) and in compliance with Good Industry Practice (having regard to the nature of its other obligations under this Agreement and under the UK GDPR and DPA 2018).	
Clause 19.6.2	Clause 19.6.2 has been amended 19.6.2 not disclose the Department Data to any third party, other than in accordance with the requirements of the UK GDPR and DPA 2018 for the purposes of fulfilling its obligations under this Agreement, except with the prior written consent of the Department or as required by this Agreement;	19 Department Data
Clause 20.19	Clause 20.19 has been added 20.19 In the circumstances set out in Clause 36.1.7, the Department may elect to take the role of Data Controller.	20 Data Protection and Protection of Personal Data
Clause 21.1.1	Clause 21.1.1 sub-clause (b) has been amended (b) in adherence with the UK GDPR and Data Protection Act 2018 ;	21 Submission of Learner Data
Clause 21.1.1	Clause 21.1.1 sub-clause (f) has been added (f) any written request from the Department.	21 Submission of Learner Data
Clause 25.3	Clause 25.3 has been amended 25.3 During the period of three (3) months preceding the expiry of this	25 Re-provision of the Services

Section	Change	Clause Reference
	<p>Agreement or within 21 days after the Department or the Provider has given notice to terminate the Agreement, the Provider must, subject to the provisions of the UK GDPR and Data Protection Law, provide and thereafter keep updated at monthly intervals, to the Department and to the Successor Provider information equivalent to the Relevant Personnel Documentation and the Staffing Information in respect of each employee whom the Provider reasonably believes will be a Future Transferring Employee provided that prior to so doing the Successor Provider nominated by the Department will have executed in writing a confidentiality undertaking in favour of the Provider.</p>	
Clause 26	<p>Clause 26 has been renamed PAYMENT, FUNDING AND AUDIT</p>	<p>26 Payment, Funding and Audit</p>
Clause 26.1	<p>Clause 26.1 has been renamed Payment, Funding and Audit provisions</p>	<p>26 Payment, Funding and Audit</p>
Clause 26.1.7	<p>Clause 26.1.7 has been amended 26.1.7 Where the Department identifies errors which it deems to be material in the data that the Provider is required to provide under the Agreement to support the payment of Funding, the Department reserves the right at its absolute discretion to require the Provider at the Provider's cost to carry out a 100% audit of all or part of the Services by a deadline specified by the Department and/or to require the Provider to repay Funding equivalent to the full amount of the Funding that has been wrongly claimed or paid. If only a sample of the Services has been audited,</p>	<p>26 Payment, Funding and Audit</p>

Section	Change	Clause Reference
	<p>the Department reserves the right to calculate an error rate based on the said sample and claim repayment from the Provider of an extrapolated amount based on the error rate identified and the total value of the Funding paid to the Provider under this Agreement.</p>	
<p>Clause 26.1.8</p>	<p>Clause 26.1.8 has been amended</p> <p>26.1.8 Without prejudice to any other provisions in this Agreement, at the Department's discretion, such amounts as are identified as being recoverable under Clause 26.1.7, may be recovered by making adjustments to data submitted by the Provider under the Agreement, or by raising an invoice for payment by the Provider, or by making deductions from future payments due to the Provider under the Agreement. Failure to settle such amounts by the Provider will constitute a Serious Breach under Clause 34 (Minor and Serious Breach) of this Agreement. The decision of the Department as to the amount of recovery under this Clause 26.1 (Payment, Funding and Audit provisions) is final.</p>	<p>26 Payment, Funding and Audit</p>
<p>Clauses 26.1.11 to 26.1.14</p>	<p>Clauses 26.1.11 to 26.1.14 have been added</p> <p>26.1.11 Where the Department identifies that the allocated Funding has been miscalculated and that the Provider has been overpaid as a result, the Department will notify the Provider in writing of the amount of the overpayment, the date when the Department will seek to recover the Funding and the method of recovery such as being through an invoice or through setting off the overpayment against future payments of the Funding.</p>	<p>26 Payment, Funding and Audit</p>

Section	Change	Clause Reference
	<p>26.1.12 If the Provider wants to make representations in relation to the notification it received in accordance with Clause 26.1.11, the Provider must put them in writing within 5 Working Days of the date the notification received from the Department. The Provider may make representations to the Department where it has incurred in good faith costs or liability in excess of the amount of allocated Funding that the Department has now notified as being the correct amount of Funding that the Provider should have been allocated.</p> <p>26.1.13 The Department will consider any representations made by the Provider in accordance with Clause 26.1.12 and issue the Provider with written notification of its final decision including the amount of overpayment of Funding to be repaid, the date when the Department will recover the Funding and the method of recovery. The Department will also set out the basis on which it has made its decision and shall include an amended Schedule 2 setting out the corrected Funding allocation.</p> <p>26.1.14 The decision of the Department as to the amount of recovery of Funding that it is due to it from the Provider is final.</p>	
Clause 28.2.3	<p>Clause 28.2.3 sub-clause (e) has been added</p> <p>(e) provision of any accounting records as referred to in Section 386 of the Companies Act 2006 and/or financial records as the Department may require which if the Provider is not a company may include similar accounting records as are referred to in Section 386 of the Companies Act 2006.</p>	28 Provider's Records and Audit
Clause 29	Clause 29 has been renamed	29 Subsidy Control

Section	Change	Clause Reference
	29 SUBSIDY CONTROL	
Clause 29.1	<p>Clause 29.1 has been amended</p> <p>29.1 The Provider should satisfy itself, if the Subsidy Control Rules apply to the Funding received in relation to the Services delivered under this Agreement. Guidance on this can be found at https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities</p>	29 Subsidy Control
Clause 29.2	<p>Clause 29.2 has been amended</p> <p>29.2 Where the rules on Subsidy Control apply, the Provider will collect and retain appropriate records and will supply those records to the Department on its request.</p>	29 Subsidy Control
Clause 29.5	<p>Clause 29.5 has been amended</p> <p>29.5 In the event that any funding paid under this Agreement is deemed to constitute unlawful subsidy control the Department reserves the right to require immediate repayment of any such funding.</p>	29 Subsidy Control
Clause 30	<p>Clause 30 has been renamed</p> <p>30 SUB-CONTRACTING</p>	30 Sub-Contracting
Clauses 30.1 to 30.3	<p>Clauses 30.1 to 30.15.4 have been deleted and replaced with the Clauses 30.1 to 30.3</p>	30 Sub-Contracting

Section	Change	Clause Reference
	<p>30.1 The Provider may enter into Sub-Contracts provided it does so in compliance with Schedule 1 (Specification and Monitoring) and Schedule 9 (Sub-Contracting).</p> <p>30.2 Notwithstanding any arrangements the Provider has entered into with any Sub-Contractor, the Provider shall not be relieved or excused of responsibility or liability under this Agreement nor shall performance of its obligations be affected by the appointment of any Sub-Contractor.</p> <p>30.3 If the Provider does not Sub-Contract, the Provider must still provide a nil return via the Subcontractor Declaration to confirm this.</p>	
Clause 31.3.1	<p>Clause 31.3.1 has been amended</p> <p>31.3.1 Subject to Clause 31.9, an indemnity by either Party under any provision of this Agreement will be without limitation to any indemnity by that Party under any other provision of this Agreement.</p>	31 Indemnities and Liability
Clause 31.9.1	<p>Clause 31.9.1 has been amended</p> <p>31.9.1 Subject to Clause 31.2 (Provider Not Responsible) and 31.8 (No Limit on Liability) the liability of the Provider for the Agreement Period will be Ten Million Pounds (£10,000,000) in aggregate in respect of all claims, losses or damages, whether arising under any indemnity from tort (including negligence), breach of Agreement or otherwise under or in connection with this Agreement.</p>	31 Indemnities and Liability
Clause 31.11.1	<p>Clause 31.11.1 has been amended</p>	31 Indemnities and Liability

Section	Change	Clause Reference
	31.11.1 With regard to the Department the total aggregate liability for the Agreement Period will be limited to its obligation to pay the Funding as and when it falls due in accordance with this Agreement.	
Clause 33.3	Clause 33.3 has been amended 33.3 The Provider must not use any Funding provided by the Department under this Agreement for any of the purposes set out in paragraphs 15 and 16 of the Cabinet Office: Guidance for General Grants Grants-Standard-SIX-Grant-Agreements.pdf (publishing.service.gov.uk).	33 Prohibited Acts
Clause 35.3.10	Clause 35.3.10 has been added 35.3.10 The Provider commits a Serious Breach of Clause 30; and/or	35 Termination
Clause 35.3.11	Clause 35.3.11 has been added 35.3.11 The Provider commits a Serious Breach of Clause 33.3.	35 Termination
Clause 35.13	Clause 35.13 has been amended 35.13 The Provider must not recruit new Learners, including Learners that have transferred from another provider , after notice of termination of the Agreement has been given. The Department will not be liable to make payments in respect of any Learners recruited in breach of this clause.	35 Termination
Clause 36.1.5	Clause 36.1.5 has been added 36.1.5 The termination or expiry of this Agreement shall be without prejudice to rights of either Party accrued prior to the Termination Date or Expiry	36 Consequences of Termination and Expiry

Section	Change	Clause Reference
	Date and shall not affect the continuing rights of the Parties under any provision of the Agreement that either expressly or by implication has effect after the Termination Date or the Expiry Date.	
Clause 36.1.6	<p>Clause 36.1.6 has been added</p> <p>36.1.6 The Department reserves the right to retain Funding that would otherwise be paid to the Provider prior to the Expiry Date or Termination Date and/or to demand repayment of Funding, as relevant, in order to reconcile what has already been paid to the Provider under Schedule 2 (Payments) with the amount the Provider is entitled to under this Agreement (including the Funding Rules).</p>	36 Consequences of Termination and Expiry
Clause 36.1.7	<p>Clause 36.1.7 has been added:</p> <p>36.1.7 Where this Agreement is terminated or expires, the Department may elect to take the role of Data Controller to secure and protect Learner Files, Learner Records and/or Evidence Packs, including e-portfolios until the Learner information can be transferred to a new Provider, the Learner, or destroyed in accordance with defined retention periods. If the Department elects to assume this role, the Provider shall co-operate fully to facilitate this.</p>	36 Consequences of Termination and Expiry
Clause 37.2	<p>Clause 37.2 has been amended</p> <p>37.2 On expiry or termination of this Agreement for any reason, the Provider shall do its utmost to minimise any disruption to Learners and shall co-operate fully with any reasonable requests made by the Department relating to this. For the avoidance of doubt the Department will be entitled to request that where the Provider cannot complete Learners</p>	37 Exit Arrangements

Section	Change	Clause Reference
	that it will co-operate in transferring the Learners to a new provider even if this is prior to the Termination Date or Expiry Date of this Agreement and the Provider's Exit Plan should reflect this. The Department will not be liable for any costs prior to or after the Termination Date or Expiry Date incurred by the Provider in complying with this Clause 37.2.	
Clause 37.5	Clause 37.5 has been added 37.5 If the Provider does not co-operate with the Department in relation to exit in accordance with this Clause 37 and the Department incurs additional expenditure of any description as a result, the Department reserves the right to require the Provider to reimburse the Department for this additional expenditure.	37 Exit Arrangements
Clause 52.1.2	The reference to 'Audit Recovery' in the table at Clause 52.1.2 has been deleted and replaced with ' Payment, Funding and Audit '	52 Continuing Obligations
Clause 52.1.2	The reference to 'GDPR' in the table at Clause 52.1.2 has been amended to ' UK GDPR and Data Protection '	52 Continuing Obligations
Schedule 9	Schedule 9: Sub-Contracting has been added	Schedule 9: Sub-Contracting

Specialist Post-16 Institution

Section	Change	Clause Reference
“Controller”	Definition has been renamed and amended “Data Controller” takes the meaning given in the UK GDPR;	1 Definitions
“Data”	Definition has been added	1 Definitions
“Data Subject”	Definition has been renamed and amended “Data Subject”, “Process” and “Processing” takes the meaning given in the UK GDPR;	1 Definitions
“Data Subject Access Request”	Definition has been renamed “Data Subject Access Request” (SAR or DSAR)	1 Definitions
“Department Data”	The last paragraph has been amended including but not limited to ILR Data, e-portfolios and learner files;	1 Definitions
“Earnings Adjustment Statement”	Definition has been added	1 Definitions
“Exemption Case”	Definition has been added	1 Definitions
“Funding Stream”	Definition has been added	1 Definitions
“GDPR”	Definition has been amended to UK GDPR and all references to GDPR have	1 Definitions

Section	Change	Clause Reference
	been amended to UK GDPR	
“Good Industry Practice”	Definition has been amended means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.	1 Definitions
“ILR”	Definition has been added	1 Definitions
“Learner Files” / “Evidence Packs”	Definition has been renamed “Learner Files” / “ Learner Records ” / “Evidence Packs”	1 Definitions
“New Provider Monitoring Visit”	Definition has been renamed and amended “ Ofsted Monitoring Visit” means an interim type of inspection carried out by Ofsted in accordance with the Further Education and Skills Inspection Handbook (Further education and skills inspection handbook - GOV.UK (www.gov.uk))	1 Definitions
“Personal Data Requiring Sensitive Processing”	Definition has been added	1 Definitions
“Processor”	Definition has been renamed and amended “ Data Processor” takes the meaning given in the UK GDPR;	1 Definitions
“Processor Personnel”	Definition has been renamed “ Data Processor Personnel”	1 Definitions

Section	Change	Clause Reference
“Services”	Definition has been amended means the services to be provided in accordance with the Funding Rules and the Specification (Schedule 1);	1 Definitions
“Sub-Contract”	Definition has been added	1 Definitions
“Sub-Contracting Threshold”	Definition has been added	1 Definitions
“Sub-Contractor”	Definition has been added	1 Definitions
“Sub-Processor”	Definition has been renamed “ Data Sub-Processor”	1 Definitions
Clause 5.1.1	Clause 5.1.1 has been amended 5.1.1 The Provider must put in place the necessary internal control framework, including an internal audit function if appropriate to ensure that it meets its obligations and those of its Sub-Contractors under this Agreement.	5 Performance Monitoring
Clauses 8.12 to 8.12.3	Clause 8.12 and sub-clauses 8.12.1 to 8.12.3 have been added 8.12 Where it applies 8.12.1 The Provider must comply with the Modern Slavery Act 2015 and must have in place throughout the Agreement Period policies and procedures to ensure full compliance.	8 Learner Welfare

Section	Change	Clause Reference
	<p>8.12.2 The Provider must ensure that all Sub-Contracts that it enters into include an obligation for the Sub-Contractor to comply with the Modern Slavery Act 2015 with special emphasis on express anti-slavery and anti-human trafficking provisions.</p> <p>8.12.3 The Provider shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain.</p>	
<p>Clause 10.7</p>	<p>Clause 10.7 has been amended</p> <p>10.7 Where appropriate, the Provider must confirm in writing to the Department that their (including Provider Related Parties) Centre Approval Status for the relevant Services 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 Organisation name(s). The Provider must notify the Department immediately in writing via the Contact Form: General Enquires at Education and Skills Funding Agency - GOV.UK (www.gov.uk) if it receives any sanction from an Awarding Organisation, including but not limited to the suspension and/or removal of Centre Approval Status and/or the removal of the ability to register or certificate learners.</p>	<p>10 Quality Assurance and Raising Standards</p>
<p>Clause 12.5.3</p>	<p>Clause 12.5.3 has been amended</p> <p>12.5.3 give consideration to the Services which are assessed as inadequate in its allocations when finalising the amount of Funding in any subsequent Agreements between the Parties; and/or</p>	<p>12 Inspections</p>

Section	Change	Clause Reference
Clause 12.10 to 12.11	Clauses 12.10 to 12.11 have been deleted	12 Inspections
Clause 12.10.1	<p>Clause 12.10.1 has been amended</p> <p>12.10.1 require the Provider to, and the Provider shall, accept and comply with additional conditions of funding relating to the improvement of the overall Services within agreed timescales. Such conditions will include complying with the published recommendations of Ofsted. These conditions will apply until a full Ofsted inspection or further Ofsted Monitoring Visit of the Provider has taken place; and/or</p>	12 Inspections
Clause 12.10.3	<p>Clause 12.10.3 has been amended</p> <p>12.10.3 require the Provider to temporarily suspend the recruitment of Learners via a sub-contracting arrangement with another main provider or employer-provider; and/or</p>	12 Inspections
Clauses 12.13 to 12.15	Clauses 12.13 to 12.15 have been deleted	12 Inspections
Clause 14.2	<p>Clause 14.2 has been restructured to separate out Clauses 14.2.1 and 14.2.3. Clause 14.2.2 and the last paragraph of Clause 14.2 have been added.</p> <p>14.2 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and payments made hereunder, the Department and/or its agents will have:</p> <p>14.2.1 the right of access to the Provider's Premises (or that of any of its Sub-Contractors) at any reasonable time with or without notice to examine and remove or copy all relevant documents</p>	14 Fraud and Irregularity

Section	Change	Clause Reference
	<p>and records including electronic records;</p> <p>14.2.2 the right to require the Provider to provide written authority to enable the Department to obtain such documents, records and/or information directly from third parties; and</p> <p>14.2.3 the right to interview the Provider's servants or agents engaged with the delivery of the Agreement.</p> <p>Failure to comply with this Clause 14.2 will constitute a Serious Breach of this Agreement.</p>	
Clause 14.5	<p>Clause 14.5 has been amended</p> <p>14.5 Where the Provider is a registered or exempt charity, the Provider will inform the Department of any schemes, orders or official warnings issued to them by the Charity Commission. Failure to inform the Department will constitute a Serious Breach of this Agreement.</p>	14 Fraud and Irregularity
Clause 15.1.1	<p>Clause 15.1.1 has been amended</p> <p>15.1.1 Subject to any obligation in respect of confidentiality, the UK GDPR and DPA 2018 and Confidential Information, the Parties will use all reasonable endeavours to provide and share information and data reasonably required by the other:</p>	15 Relationships
Clause 19.3	<p>Clause 19.3 has been amended</p> <p>19.3 The Provider must take all necessary steps to ensure that any Department Data which comes into its possession or control is protected in accordance with the UK GDPR and DPA 2018 and appropriate</p>	19 Department Data

Section	Change	Clause Reference
	security procedures as set out in Schedule 7 (Security & Department Policies) and in compliance with Good Industry Practice (having regard to the nature of its other obligations under this Agreement and under the UK GDPR and DPA 2018).	
Clause 19.6.2	<p>Clause 19.6.2 has been amended</p> <p>19.6.2 not disclose the Department Data to any third party, other than in accordance with the requirements of the UK GDPR and DPA 2018 for the purposes of fulfilling its obligations under this Agreement, except with the prior written consent of the Department or as required by this Agreement;</p>	19 Department Data
Clause 20.8.2	<p>Clause 20.8.2 has been amended</p> <p>20.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or</p>	20 Data Protection and Protection of Personal Data
Clause 20.19	<p>Clause 20.19 has been added</p> <p>20.19 In the circumstances set out in Clause 37.1.7, the Department may elect to take the role of Data Controller.</p>	20 Data Protection and Protection of Personal Data
Clause 21.1.1	<p>Clause 21.1.1 sub-clause (b) has been amended</p> <p>(b) in adherence with the UK GDPR and Data Protection Act 2018;</p>	21 Submission of Learner Data

Section	Change	Clause Reference
Clause 21.1.1	Clause 21.1.1 sub-clause (f) has been added (f) any written request from the Department.	21 Submission of Learner Data
Clause 25.3	Clause 25.3 has been amended 25.3 During the period of three months (3) preceding the expiry of this Agreement or within 21 days after the Department or the Provider has given notice to terminate the Agreement, the Provider must, subject to the provisions of the UK GDPR and Data Protection Law , provide and thereafter keep updated at monthly intervals, to the Department and to the Successor Provider information equivalent to the Relevant Personnel Documentation and the Staffing Information in respect of each employee whom the Provider reasonably believes will be a Future Transferring Employee provided that prior to so doing the Successor Provider nominated by the Department will have executed in writing a confidentiality undertaking in favour of the Provider.	25 Re-provision of the Services
Clause 26	Clause 26 has been renamed 26 PAYMENT, FUNDING AND AUDIT	26 Payment, Funding and Audit
Clause 26.1	Clause 26.1 has been renamed 26.1 Payment, Funding and Audit provisions	26 Payment, Funding and Audit
Clause 26.1.7	Clause 26.1.7 has been amended 26.1.7 Where the Department identifies errors which it deems material in the	26 Payment, Funding and

Section	Change	Clause Reference
	<p>data that the Provider is required to provide under the Agreement to support the payment of Funding, the Department reserves the right at its absolute discretion to require the Provider at the Provider's cost to carry out a 100% audit of all or part of the Services by a deadline specified by the Department and / or to require the Provider to repay Funding equivalent to the full amount of the Funding that has been wrongly claimed or paid. If only a sample of the Services has been audited, the Department reserves the right to calculate an error rate based on the said sample and claim repayment from the Provider of an extrapolated amount based on the error rate identified and the total value of the Funding paid to the Provider under this Agreement.</p>	Audit
<p>Clause 26.1.8</p>	<p>Clause 26.1.8 has been amended</p> <p>26.1.8 Without prejudice to any other provisions in this Agreement, at the Department's discretion, such amounts as are identified as being recoverable under Clause 26.1.7, may be recovered by making adjustments to data submitted by the Provider under the Agreement, or by raising an invoice for payment by the Provider, or by making deductions from future payments due to the Provider under the Agreement. Failure to settle such amounts by the Provider will constitute a Serious Breach under Clause 34 (Minor and Serious Breach) of this Agreement. The decision of the Department as to the amount of recovery under this Clause 26.1 (Payment, Funding and Audit provisions) is final.</p>	26 Payment, Funding and Audit
<p>Clauses 26.1.11 to 26.1.14</p>	<p>Clauses 26.1.11 to 26.1.14 have been added</p>	26 Payment, Funding and

Section	Change	Clause Reference
	<p>26.1.11 Where the Department identifies that the allocated Funding has been miscalculated and that the Provider has been overpaid as a result, the Department will notify the Provider in writing of the amount of the overpayment, the date when the Department will seek to recover the Funding and the method of recovery such as being through an invoice or through setting off the overpayment against future payments of the Funding.</p> <p>26.1.12 If the Provider wants to make representations in relation to the notification it received in accordance with Clause 26.1.11, the Provider must put them in writing within 5 Working Days of the date the notification received from the Department. The Provider may make representations to the Department where it has incurred in good faith costs or liability in excess of the amount of allocated Funding that the Department has now notified as being the correct amount of Funding that the Provider should have been allocated.</p> <p>26.1.13 The Department will consider any representations made by the Provider in accordance with Clause 26.1.12 and issue the Provider with written notification of its final decision including the amount of overpayment of Funding to be repaid, the date when the Department will recover the Funding and the method of recovery. The Department will also set out the basis on which it has made its decision and shall include an amended Schedule 2 setting out the corrected Funding allocation.</p> <p>26.1.14 The decision of the Department as to the amount of recovery of Funding that it is due to it from the Provider is final.</p>	Audit
Clause 28.2.3	Clause 28.2.3 sub-clause € has been added	28 College's

Section	Change	Clause Reference
	(e) provision of any accounting records as referred to in Section 386 of the Companies Act 2006 and/or financial records as the Department may require which if the Provider is not a company may include similar accounting records as are referred to in Section 386 of the Companies Act 2006.	Records and Audit
Clause 29	Clause 29 has been renamed 29 SUBSIDY CONTROL	29 Subsidy Control
Clause 29.1	Clause 29.1 has been amended 29.1 The Provider should satisfy itself, if the Subsidy Control Rules apply to the Funding received in relation to the Services delivered under this Agreement. Guidance on this can be found at https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities.	29 Subsidy Control
Clause 29.2	Clause 29.2 has been amended 29.2 Where the rules on Subsidy Control apply, the Provider will collect and retain appropriate records and will supply those records to the Department on its request.	29 Subsidy Control
Clause 29.5	Clause 29.5 has been amended 29.5 In the event that any funding paid under this Agreement is deemed to constitute unlawful subsidy control the Department reserves the right to require immediate repayment of any such funding.	29 Subsidy Control

Section	Change	Clause Reference
Clause 30	Clause 30 has been renamed 30 SUB-CONTRACTING	30 Sub-Contracting
Clauses 30.1 to 30.3	<p>Clauses 30.1 to 30.15.4 have been deleted and replaced with the Clauses 30.1 to 30.3</p> <p>30.1 The Provider may enter into Sub-Contracts provided it does so in compliance with Schedule 1 (Specification and Monitoring) and Schedule 9 (Sub-Contracting).</p> <p>30.2 Notwithstanding any arrangements the Provider has entered into with any Sub-Contractor, the Provider shall not be relieved or excused of responsibility or liability under this Agreement nor shall performance of its obligations be affected by the appointment of any Sub-Contractor.</p> <p>30.3 If the Provider does not Sub-Contract, the Provider must still provide a nil return via the Subcontractor Declaration to confirm this.</p>	30 Sub-Contracting
Clause 31.3.1	<p>Clause 31.3.1 has been amended</p> <p>31.3.1 Subject to Clause 31.9, an indemnity by either Party under any provision of this Agreement will be without limitation to any indemnity by that Party under any other provision of this Agreement.</p>	31 Indemnities and Liability
Clause 31.9.1	<p>Clause 31.9.1 has been amended</p> <p>31.9.1 Subject to Clause 31.2 (Provider Not Responsible) and 31.8 (No Limit on Liability) the liability of the Provider for the Agreement Period will be Ten Million Pounds (£10,000,000) in aggregate in respect of all claims, losses or damages, whether arising under any indemnity from</p>	31 Indemnities and Liability

Section	Change	Clause Reference
	tort (including negligence), breach of Agreement or otherwise under or in connection with this Agreement.	
Clause 31.11.1	Clause 31.11.1 has been amended 31.11.1 With regard to the Department the total aggregate liability for the Agreement Period will be limited to its obligation to pay the Funding as and when it falls due in accordance with the Agreement.	31 Indemnities and Liability
Clause 34.3	Clause 34.3 has been amended 34.3 The Provider must not use any Funding provided by the Department under this Agreement for any of the purposes set out in paragraphs 15 and 16 of the Cabinet Office: Guidance for General Grants Grants-Standard-SIX-Grant-Agreements.pdf (publishing.service.gov.uk) .	34 Prohibited Acts
Clause 36.3.11	Clause 36.3.11 has been added 36.3.11 The Provider commits a Serious Breach of Clause 30; and/or	36 Termination
Clause 36.3.12	Clause 36.3.12 has been added 36.3.12 The Provider commits a Serious Breach of Clause 34.3.	36 Termination
Clause 36.12	Clause 36.12 has been amended 36.12 The Provider must not recruit new Learners, including Learners that have transferred from another provider , after notice of termination of the Agreement has been given. The Department will not be liable to make payments in respect of any Learners recruited in breach of this clause.	36 Termination

Section	Change	Clause Reference
Clause 37.1.5	<p>Clause 37.1.5 has been added</p> <p>37.1.5 The termination or expiry of this Agreement shall be without prejudice to rights of either Party accrued prior to the Termination Date or Expiry Date and shall not affect the continuing rights of the Parties under any provision of the Agreement that either expressly or by implication has effect after the Termination Date or the Expiry Date.</p>	37 Consequences of Termination and Expiry
Clause 37.1.6	<p>Clause 37.1.6 has been added</p> <p>37.1.6 The Department reserves the right to retain Funding that would otherwise be paid to the Provider prior to the Expiry Date or Termination Date and/or to demand repayment of Funding, as relevant, in order to reconcile what has already been paid to the Provider under Schedule 2 (Payments) with the amount the Provider is entitled to under this Agreement (including the Funding Rules).</p>	37 Consequences of Termination and Expiry
Clause 37.1.7	<p>Clause 37.1.7 has been added</p> <p>37.1.7 Where this Agreement is terminated or expires, the Department may elect to take the role of Data Controller to secure and protect Learner Files, Learner Records and/or Evidence Packs, including e-portfolios until the Learner information can be transferred to a new Provider, the Learner, or destroyed in accordance with defined retention periods. If the Department elects to assume this role, the Provider shall co-operate fully to facilitate this.</p>	37 Consequences of Termination and Expiry
Clause 38.2	<p>Clause 38.2 has been amended</p> <p>38.2 On expiry or termination of this Agreement for any reason, the Provider</p>	38 Exit Arrangements

Section	Change	Clause Reference
	<p>shall do its utmost to minimise any disruption to Learners and shall co-operate fully with any reasonable requests made by the Department relating to this. For the avoidance of doubt the Department will be entitled to request that where the Provider cannot complete Learners that it will co-operate in transferring the Learners to a new provider even if this is prior to the Termination Date or Expiry Date of this Agreement and the Provider's Exit Plan should reflect this. The Department will not be liable for any costs prior to or after the Termination Date or Expiry Date incurred by the Provider in complying with this Clause 38.2.</p>	
Clause 38.5	<p>Clause 38.5 has been added</p> <p>38.5 If the Provider does not co-operate with the Department in relation to exit in accordance with this Clause 38 and the Department incurs additional expenditure of any description as a result, the Department reserves the right to require the Provider to reimburse the Department for this additional expenditure.</p>	38 Exit Arrangements
Clause 53.1.2	<p>The reference to 'Audit Recovery' in the table at Clause 53.1.2 has been deleted and replaced with 'Payment, Funding and Audit'</p>	53 Continuing Obligations
Clause 53.1.2	<p>The reference to 'GDPR' in the table at Clause 53.1.2 has been amended to 'UK GDPR and Data Protection'</p>	53 Continuing Obligations
Schedule 9	<p>Schedule 9: Sub-Contracting has been added</p>	Schedule 9: Sub-Contracting

Non-Maintained Special Schools (NMSS)

Section	Change	Clause Reference
“Data Loss Event”	Definition has been removed	1 Definitions
“Data Protection Impact Assessment”	Definition has been removed	1 Definitions
“Data Protection Officer”	Definition has been removed	1 Definitions
“Data Subject Access Request”	Definition has been removed	1 Definitions
“Funding Stream”	Definition has been added	1 Definitions
“GDPR”	Definition has been amended to UK GDPR and all references to GDPR have been amended to UK GDPR	1 Definitions
“Good Industry Practice”	Definition has been amended means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;	1 Definitions
“Guidance”	Definition has been amended any applicable guidance or directions with which the NMSS is bound to comply, including that issued by the Department;	1 Definitions

Section	Change	Clause Reference
“High Needs Learner”	Definition has been amended means a young person aged 19 to 25 who is subject to an Education Health and Care Plan and who is placed in the NMSS by an English local authority ;	1 Definitions
“High Needs Pupil”	Definition has been amended means a child aged 18 or under who is subject to an Education Health and Care Plan and who is placed in the NMSS by an English local authority ;	1 Definitions
“ICT Environment”	Definition has been removed	
“Intellectual Property Rights”	Definition has been removed	1 Definitions
“New Provider Monitoring Visit”	Definition has been renamed and amended “Ofsted Monitoring Visit” means an interim type of inspection carried out by Ofsted in accordance with the Further Education and Skills Inspection Handbook (Further education and skills inspection handbook - GOV.UK (www.gov.uk))	1 Definitions
“Learner”	Definition has been removed	1 Definitions
“Local Enterprise Partnership (LEP)”	Definition has been removed	1 Definitions
“Malicious Software”	Definition has been removed	1 Definitions
“NMSS Regulations”	Definition has been added	1 Definitions

Section	Change	Clause Reference
“Offender Manager”	Definition has been removed	1 Definitions
“Processor”	Definition has been removed	1 Definitions
“Processor Personnel”	Definition has been removed	1 Definitions
“Protective Measures”	Definition has been removed	1 Definitions
“Services”	Definition has been amended means the services to be provided in accordance with the Funding Rules and the Specification (Schedule 1);	1 Definitions
“Service Transfer”	Definition has been removed	1 Definitions
“Service Transfer Date”	Definition has been removed	1 Definitions
“Skills Advisory Panel” or “SAP”	Definition has been removed	1 Definitions
“SME”	Definition has been removed	1 Definitions
“Sub-Contract”	Definition has been added	1 Definitions
“Sub-Contracting Threshold”	Definition has been added	1 Definitions
“Sub-Contractor”	Definition has been added	1 Definitions

Section	Change	Clause Reference
Clause 1.4	<p>Clause 1.4 has been amended</p> <p>1.4 Precedence of Documentation</p> <p>In the event of any inconsistency between the provisions of the Terms and Conditions and the Schedules, or between any of the Schedules, the conflict shall be resolved according to the following descending order of priority:</p> <p>1.4.1 the Terms and Conditions, 1.4.2 Schedule 1 (the Specification), 1.4.3 the remaining Schedules,</p> <p>for the avoidance of doubt, in the event of any inconsistency between this Agreement, NMSS Regulations and the Funding Rules, the NMSS Regulations will take precedence.</p>	1 Definitions
Clause 5.1.1	<p>Clause 5.1.1 has been amended</p> <p>5.1.1 The NMSS must put in place the necessary internal control framework, including an internal audit function if appropriate to ensure that it meets its obligations and those of its Sub-Contractors under this Agreement.</p>	5 Performance Monitoring
Clause 8.8	<p>Clause 8.8 has been deleted</p>	8 Learner Welfare
Clauses 8.12 to 8.12.3	<p>Clause 8.12 and sub-clauses 8.12.1 to 8.12.3 have been added</p> <p>8.12 Where it applies</p> <p>8.12.1 The NMSS must comply with the Modern Slavery Act 2015 and</p>	8 Learner Welfare

Section	Change	Clause Reference
	<p>must have in place throughout the Agreement Period policies and procedures to ensure full compliance.</p> <p>8.12.2 The NMSS must ensure that all Sub-Contracts that it enters into include an obligation for the Sub-Contractor to comply with the Modern Slavery Act 2015 with special emphasis on express anti-slavery and anti-human trafficking provisions.</p> <p>8.12.3 The NMSS shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain.</p>	
Clause 10.5.1	<p>Clause 10.5.1 has been amended</p> <p>10.5.1 where appropriate minimise dropout rates and deliver high completion and achievement rates and appropriate progression;</p>	
Clause 10.7	<p>Clause 10.7 has been amended</p> <p>10.7 Where appropriate, the NMSS must confirm in writing to the Department that their (including NMSS Related Parties) Centre Approval Status for the relevant Services 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 Organisation name(s). The NMSS must notify the Department immediately in writing via the Contact Form: General Enquires at Education and Skills Funding Agency - GOV.UK (www.gov.uk) if it receives any sanction from an Awarding Organisation, including but not limited to the suspension and/or removal of Centre Approval Status and/or the removal of the ability to register or</p>	10 Quality Assurance and Raising Standards

Section	Change	Clause Reference
	certificate learners.	
Clause 12.2	<p>Clause 12.2 has been amended</p> <p>12.2 Ofsted may, at any time during the Agreement Period, or on the instruction of the Department, undertake an inspection of the NMSS. The Department will consider the outcome of any such inspection in the manner set out in Clauses 12.3 to 12.8.</p>	12 Inspections
Clause 12.3	<p>Clause 12.3 has been amended</p> <p>12.3 Where Ofsted has assessed the Services to be inadequate in any graded sub-judgement, including residential provision, the Department may, in its absolute discretion take one or more of the following actions:</p> <p>12.3.1 require the NMSS to accept and comply with additional conditions of funding relating to the improvement of the Services assessed as inadequate; and/or</p> <p>12.3.2 require the NMSS to suspend the enrolment of Pupils to, and/or to cap any growth in, the Services which is assessed as inadequate; and/or</p> <p>12.3.3 give consideration to the Services which are assessed as inadequate in its allocations when finalising the amount of Funding in any subsequent Agreements between the Parties; and/or</p> <p>12.3.4 reduce, suspend or recover payment to the NMSS in respect of that part of the Services assessed as inadequate; and/or</p>	12 Inspections

Section	Change	Clause Reference
	12.3.5 terminate the Agreement in accordance with Clause 36.3.4.	
Clause 12.5.3	<p>Clause 12.5.3 has been amended</p> <p>12.5.3 give consideration to the Services which are assessed as inadequate in its allocations when finalising the amount of Funding in any subsequent Agreements between the Parties; and/or</p>	12 Inspections
Clause 12.9	<p>Clause 12.9 has been replaced</p> <p>12.9 The NMSS must permit access at any reasonable time to any representative of any of the Inspectorates in order to undertake an inspection of the residential accommodation provided to Pupils. The NMSS must ensure that such representatives are able to examine, or take copies of any documentation, accounts, books and records relevant to the provision of the residential accommodation to the Pupils and to conduct interviews with relevant Pupils in relation to the accommodation provided to them during these visits at any reasonable time.</p>	12 Inspections
Clauses 12.10	<p>Clause 12.10 has been replaced</p> <p>Ofsted Monitoring Visits</p> <p>12.10 Where the Department is made aware that Ofsted has assessed the NMSS as having made “insufficient progress” during their programme of Ofsted Monitoring Visits, the Department may, in its absolute discretion take the following actions:</p> <p>12.10.1 require the NMSS to, and the NMSS shall, accept and comply with additional conditions of funding relating to the improvement of the Services within agreed timescales. Such</p>	12 Inspections

Section	Change	Clause Reference
	<p>conditions will include complying with the published recommendations of Ofsted. These conditions will apply until a full Ofsted inspection or further Ofsted Monitoring Visit of the NMSS has taken place; and/or</p> <p>12.10.2 require the NMSS to temporarily suspend the enrolment of Pupils; and/or</p> <p>12.10.3 not used</p> <p>12.10.4 require the NMSS to inform all of their existing main providers about the outcome of the Ofsted visit; and/or</p> <p>12.10.5 terminate this Agreement in accordance with Clause 36.3.5 (Termination) where Pupils may be at immediate risk on the grounds of safeguarding issues and/or the quality of leadership and/or learning provision is such that one or more Pupil has no reasonable prospect of achieving his or her learning objective; and/or</p> <p>12.10.6 terminate this Agreement in accordance with Clause 36.3.6 (Termination) if the NMSS has two (2) consecutive Ofsted Monitoring Visits each resulting in one or more “insufficient progress” judgements in relation to one or more themes.</p>	
Clauses 12.11 to 12.13	Clauses 12.11 to 12.13 have been deleted	12 Inspections
Clause 14.2	<p>Clause 14.2 has been restructured to separate out Clauses 14.2.1 and 14.2.3. Clause 14.2.2 and the last paragraph of Clause 14.2 have been added.</p> <p>14.2 Where the Department has reasonable cause to suspect that fraud or</p>	14 Fraud and Irregularity

Section	Change	Clause Reference
	<p>irregularity has occurred in relation to the delivery of the Agreement and payments made hereunder, the Department and/or its agents will have:</p> <p>14.2.1 the right of access to the NMSS's Premises (or that of any of its Sub-Contractors) at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records;</p> <p>14.2.2 the right to require the NMSS to provide written authority to enable the Department to obtain such documents, records and/or information directly from third parties; and</p> <p>14.2.3 the right to interview the NMSS's servants or agents engaged with the delivery of the Agreement.</p> <p>Failure to comply with this Clause 14.2 will constitute a Serious Breach of this Agreement.</p>	
Clause 14.5	<p>Clause 14.5 has been amended</p> <p>14.5 Where the NMSS is a registered or exempt charity, the NMSS will inform the Department of any schemes, orders or official warnings issued to them by the Charity Commission. Failure to inform the Department will constitute a Serious Breach of this Agreement.</p>	14 Fraud and Irregularity
Clause 14.6	<p>Clause 14.6 has been deleted</p>	14 Fraud and Irregularity
Clause 15.1.1	<p>Clause 15.1.1 has been amended</p> <p>15.1.1 Subject to any obligation in respect of confidentiality, the UK GDPR</p>	15 Relationships

Section	Change	Clause Reference
	<p>and DPA 2018 and Confidential Information, the Parties will use all reasonable endeavours to provide and share information and data reasonably required by the other:</p>	
<p>Clause 15.3</p>	<p>Clause 15.3 has been replaced</p> <p>15.3.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Services will rest with the NMSS.</p> <p>15.3.2 The NMSS must ensure that all the requirements set out at paragraph 31 of the NMSS Regulations are met.</p> <p>15.3.3 Where a complaint has not been resolved to the satisfaction of the complainant the NMSS will advise the complainant of his or her right to complain to the Department (https://www.gov.uk/government/organisations/education-and-skills-funding-agency/about/complaints-procedure) and co-operate with any investigation carried out by the Department and act on any recommendations made by the Department following the investigation.</p>	<p>15 Relationships</p>
<p>Clause 18</p>	<p>Clause 18 has been deleted</p>	<p>18 Assignment of IPR in Databases</p>
<p>Clause 19</p>	<p>Clause 19 has been deleted</p>	<p>19 Department Data</p>

Section	Change	Clause Reference
Clause 20.1	<p>Clause 20.1 has been replaced</p> <p>20.1 The NMSS should meet the data protections and data sharing requirements set out in the School Census Statutory requirement, data sharing and regulations - Complete the school census - Guidance - GOV.UK (www.gov.uk), and should give due consideration to the Data protection: toolkit for schools Data protection: toolkit for schools - GOV.UK (www.gov.uk).</p>	20 Data Protection and Protection of Personal Data
Clause 21.1.1	<p>Clause 21.1.1 sub-clause (b) has been amended in adherence with the UK GDPR and Data Protection Act 2018;</p>	21 Submission of Learner Data
Clause 21.1.1	<p>Clause 21.1.1 sub-clause (f) has been added any written request from the Department.</p>	21 Submission of Learner Data
Clause 22	<p>Clause 22 has been deleted</p>	22 Security
Clause 25	<p>Clause 25 has been deleted</p>	25 Re-provision of Services
Clause 26	<p>Clause 26 has been renamed PAYMENT, FUNDING AND AUDIT</p>	26 Payment, Funding and Audit
Clause 26.1	<p>Clause 26.1 has been renamed Payment, Funding and Audit provisions</p>	26 Payment, Funding and Audit

Section	Change	Clause Reference
<p>Clause 26.1.7</p>	<p>Clause 26.1.7 has been amended</p> <p>26.1.7 Where the Department identifies errors which it deems material in the data that the NMSS is required to provide under the Agreement to support the payment of Funding, the Department reserves the right at its absolute discretion to require the NMSS at the NMSS's cost to carry out a 100% audit of all or part of the Services by a deadline specified by the Department and / or to require the NMSS to repay Funding equivalent to the full amount of the Funding that has been wrongly claimed or paid. If only a sample of the Services has been audited, the Department reserves the right to calculate an error rate based on the said sample and claim repayment from the NMSS of an extrapolated amount based on the error rate identified and the total value of the Funding paid to the NMSS under this Agreement.</p>	<p>26 Payment, Funding and Audit</p>
<p>Clause 26.1.8</p>	<p>Clause 26.1.8 has been amended</p> <p>26.1.8 Without prejudice to any other provisions in this Agreement, at the Department's discretion, such amounts as are identified as being recoverable under Clause 26.1.7, may be recovered by making adjustments to data submitted by the NMSS under the Agreement, or by raising an invoice for payment by the NMSS, or by making deductions from future payments due to the NMSS under the Agreement. Failure to settle such amounts by the NMSS will constitute a Serious Breach under Clause 34 (Minor and Serious Breach) of this Agreement. The decision of the Department as to the amount of recovery under this Clause 26.1 (Payment, Funding and</p>	<p>26 Payment, Funding and Audit</p>

Section	Change	Clause Reference
	Audit provisions) is final.	
Clauses 26.1.11 to 26.1.14	<p>Clauses 26.1.11 to 26.1.14 have been added</p> <p>26.1.11 Where the Department identifies that the allocated Funding has been miscalculated and that the NMSS has been overpaid as a result, the Department will notify the NMSS in writing of the amount of the overpayment, the date when the Department will seek to recover the Funding and the method of recovery such as being through an invoice or through setting off the overpayment against future payments of the Funding.</p> <p>26.1.12 If the NMSS wants to make representations in relation to the notification it received in accordance with Clause 26.1.11, the NMSS must put them in writing within 5 Working Days of the date the notification received from the Department. The NMSS may make representations to the Department where it has incurred in good faith costs or liability in excess of the amount of allocated Funding that the Department has now notified as being the correct amount of Funding that the NMSS should have been allocated.</p> <p>26.1.13 The Department will consider any representations made by the NMSS in accordance with Clause 26.1.12 and issue the NMSS with written notification of its final decision including the amount of overpayment of Funding to be repaid, the date when the Department will recover the Funding and the method of recovery. The Department will also set out the basis on which it has made its decision and shall include an amended Schedule 2 setting out the corrected Funding allocation.</p> <p>26.1.14 The decision of the Department as to the amount of recovery of Funding</p>	<p>26 Payment, Funding and Audit</p>

Section	Change	Clause Reference
	that it is due to it from the NMSS is final.	
Clause 28.2.3	Clause 28.2.3 sub-clause (e) has been added provision of any accounting records as referred to in Section 386 of the Companies Act 2006 and/or financial records as the Department may require which if the NMSS is not a company may include similar accounting records as are referred to in Section 386 of the Companies Act 2006.	28 NMSS's Records and Audit
Clause 29 State Aid	Clause 29 has been deleted	29 State Aid
Clause 30	Clause 30 has been renamed 30 SUB-CONTRACTING	30 Sub- Contracting
Clauses 30.1 to 30.3	Clauses 30.1 to 30.15.4 have been deleted and replaced with the Clauses 30.1 to 30.3 30.1 The NMSS may enter into Sub-Contracts provided it does so in compliance with Schedule 1 (Specification and Monitoring) and Schedule 9 (Sub-Contracting). 30.2 Notwithstanding any arrangements the NMSS has entered into with any Sub-Contractor, the NMSS shall not be relieved or excused of responsibility or liability under this Agreement nor shall performance of its obligations be affected by the appointment of any Sub-Contractor. 30.3 If the NMSS does not Sub-Contract, the NMSS must still provide a nil return via the Subcontractor Declaration to confirm this.	30 Sub- Contracting

Section	Change	Clause Reference
Clause 31.3.1	<p>Clause 31.3.1 has been amended</p> <p>31.3.1 Subject to Clause 31.9, an indemnity by either Party under any provision of this Agreement will be without limitation to any indemnity by that Party under any other provision of this Agreement.</p>	31 Indemnities and Liability
Clause 31.9.1	<p>Clause 31.9.1 has been amended</p> <p>31.9.1 Subject to Clause 31.2 (NMSS Not Responsible) and 31.8 (No Limit on Liability) the liability of the NMSS for the Agreement Period will be Ten Million Pounds (£10,000,000) in aggregate in respect of all claims, losses or damages, whether arising under any indemnity from tort (including negligence), breach of Agreement or otherwise under or in connection with this Agreement.</p>	31 Indemnities and Liability
Clause 31.11.1	<p>Clause 31.11.1 has been amended</p> <p>31.11.1 With regard to the Department the total aggregate liability for the Agreement Period will be limited to its obligation to pay the Funding as and when it falls due in accordance with the Agreement.</p>	31 Indemnities and Liability
Clause 33.4	<p>Clause 33.4 has been deleted</p>	33 Change in Control
Clause 34.3	<p>Clause 34.3 has been amended</p> <p>34.3 The NMSS must not use any Funding provided by the Department under this Agreement for any of the purposes set out in paragraphs 15 and 16 of the Cabinet Office: Guidance for General Grants Grants-Standard-SIX-Grant-Agreements.pdf</p>	34 Prohibited Acts

Section	Change	Clause Reference
	publishing.service.gov.uk .	
Clause 36.2.4	<p>Clause 36.2.4 has been added</p> <p>36.2.4 the Department withdraws approval from the NMSS; or an order by a justice of the peace has come into effect under the NMSS Regulations that the NMSS shall cease to be approved and no appeal to the First-tier Tribunal is pending.</p>	36 Termination
Clause 36.3.8	Clause 36.3.8 has been deleted	36 Termination
Clause 36.3.11	<p>Clause 36.3.11 has been added</p> <p>36.3.11 The NMSS commits a Serious Breach of Clause 30; and/or</p>	36 Termination
Clause 36.3.12	<p>Clause 36.3.12 has been added</p> <p>36.3.12 The NMSS commits a Serious Breach of Clause 34.3.</p>	36 Termination
Clause 36.12	<p>Clause 36.12 has been amended</p> <p>36.12 The NMSS must not recruit new Learners, including Learners that have transferred from another provider, after notice of termination of the Agreement has been given. The Department will not be liable to make payments in respect of any Learners recruited in breach of this clause.</p>	36 Termination
Clause 37.1.5	<p>Clause 37.1.5 has been added</p> <p>37.1.5 The termination or expiry of this Agreement shall be without prejudice to rights of either Party accrued prior to the Termination Date or Expiry Date and shall not affect the continuing rights of the Parties under any provision of the Agreement that either expressly or by implication has</p>	37 Consequences of Termination and Expiry

Section	Change	Clause Reference
	effect after the Termination Date or the Expiry Date.	
Clause 37.1.6	<p>Clause 37.1.6 has been added</p> <p>37.1.6 The Department reserves the right to retain Funding that would otherwise be paid to the NMSS prior to the Expiry Date or Termination Date and/or to demand repayment of Funding, as relevant, in order to reconcile what has already been paid to the NMSS under Schedule 2 (Payments) with the amount the NMSS is entitled to under this Agreement (including the Funding Rules).</p>	37 Consequences of Termination and Expiry
Clause 37.1.7	<p>Clause 37.1.7 has been added</p> <p>37.1.7 Where this Agreement is terminated or expires, the Department may elect to take the role of Data Controller to secure and protect Learner Files, Learner Records and/or Evidence Packs, including e-portfolios until the Learner information can be transferred to a new NMSS, the Learner, or destroyed in accordance with defined retention periods. If the Department elects to assume this role, the NMSS shall co-operate fully to facilitate this.</p>	37 Consequences of Termination and Expiry
Clause 38.2	<p>Clause 38.2 has been amended</p> <p>38.2 On expiry or termination of this Agreement for any reason, the NMSS shall do its utmost to minimise any disruption to Learners and shall co-operate fully with any reasonable requests made by the Department relating to this. For the avoidance of doubt the Department will be entitled to request that where the NMSS cannot complete Learners that it will co-operate in transferring the Learners to a new NMSS even if this is prior to the Termination Date or Expiry Date of this Agreement and the NMSS's</p>	38 Exit Arrangements

Section	Change	Clause Reference
	Exit Plan should reflect this. The Department will not be liable for any costs prior to or after the Termination Date or Expiry Date incurred by the NMSS in complying with this Clause 38.2.	
Clause 53.1.2	The reference to Assignment of IPR in Databases at Clause 53.1.2 has been deleted	53 Continuing Obligations
Clause 53.1.2	The reference to Department Data at Clause 53.1.2 has been deleted	53 Continuing Obligations
Clause 53.1.2	The reference to Re-Provision of Services at Clause 53.1.2 has been deleted	53 Continuing Obligations
Clause 53.1.2	The reference to 'Audit Recovery' in the table at Clause 53.1.2 has been deleted and replaced with ' Payment, Funding and Audit '	53 Continuing Obligations
Clause 53.1.2	The reference to Schedule 6 GDPR has been deleted	53 Continuing Obligations
Schedule 1	Schedule 1 Annex 2 has been added	Schedule 1 Specification and Monitoring
Schedule 6	Schedule 6 GDPR has been deleted	Schedule 6 GDPR
Schedule 7	Schedule 7 Security and Department Policies has been amended	Schedule 7 Security and Department

Section	Change	Clause Reference
		Policies
Schedule 9	Schedule 9: Sub-Contracting has been added	Schedule 9: Sub-Contracting