

Conditions of Funding (Grant) (Local Authorities)

Section	Change	Clause Reference
Entire Agreement	All references to “Accountability Framework” have been replaced with “Apprenticeship Accountability Framework”	Entire Agreement
Entire Agreement	All references to “Her Majesty” have been deleted and replaced with “His Majesty” throughout the Agreement	Entire Agreement
Entire Agreement	All references to “Register of Apprenticeship Training Providers” including the definition in Clause 1 have been amended to “Apprenticeship Provider Assessment Register” throughout the Agreement.	Entire Agreement
“Department”	Definition has been amended means the Secretary of State for Education acting through the Department for Education and / or Education and Skills Funding Agency (ESFA) as appropriate;	1 Definitions
“Earnings Adjustment Statement”	Definition has been amended means Earnings adjustment statement (EAS) - GOV.UK (www.gov.uk) as updated and amended from time to time;	1 Definitions
“EIR”	Definition has been added means the Environmental Information Regulations 2004;	1 Definitions
“Exemption Case”	Definition has been amended	1 Definitions

Section	Change	Clause Reference
	means the case submitted by the Provider to the Department in accordance with “Subcontracting threshold and exemption cases” of the Sub-Contracting Funding Rules for permission to exceed the Sub-Contracting Threshold;	
“Funding Higher Risk Organisations Policy”	Definition has been added means the policy described in Schedule 9: Sub-Contracting and available at Funding higher risk organisations and subcontractors policy - GOV.UK (www.gov.uk)	1 Definitions
“Funding Period”	Definition has been added means the period set out on page 1 of this Agreement.	1 Definitions
“Sub-Contract”	Definition has been amended means an agreement entered into between the Provider and a Sub-Contractor for the purposes of engaging the Sub-Contractor to deliver part of the Services on behalf of the Provider;	1 Definitions
“Sub-Contracting”	Definition has been added means any delivery to a Learner’s programme of learning by a separate legal entity, irrespective of whether such learning is provided by a third party recruited to deliver on site (travel to teach), online learning or whether it is described as a service;	1 Definitions
“Sub-Contractor”	Definition has been amended means a separate legal entity or an individual (not an employee) that has an agreement (called a Sub-Contract) with the Provider to deliver any element of the Services the Department funds. A separate legal entity includes but is not limited to companies in the Provider’s group, other associated companies and sole traders. An individual could include a person who is a sole trader, self-employed, a freelancer or someone who is employed by an agency, unless those	1 Definitions

Section	Change	Clause Reference
	individuals are working under the Provider’s direct management and control in the same way as the Provider’s own employees. This does not include relationships between the Provider and other third parties providing services such as marketing;	
Clause 3.5	<p>Clause 3.5 has been added</p> <p>3.5 The Provider will comply in all respects with all relevant Laws to which it may be subject.</p>	3 Service Delivery
Clause 5.2.4	<p>Clause 5.2.4 has been amended</p> <p>5.2.4 Without prejudice to the Department’s rights under Clauses 34 (Withholding, Suspension and Repayment of Funding) and 35.2 (Termination) and to any other express rights under this Agreement, where the Provider has been found to be fraudulent or have recklessly submitted erroneous reports, claims and/or learner data, or the Department reasonably believes such reports to be fraudulent or erroneous the Department may, by notice to the Provider, increase the level of its monitoring of the Provider, or (at the Department’s option) require the Provider to increase the level of the Provider's monitoring of its own performance of its obligations under this Agreement in respect of the relevant Services which are the subject of such fraudulent, erroneous or misleading reporting until such time as the Provider must have demonstrated to the reasonable satisfaction of the Department that it will perform (and is capable of performing) its obligations under this Agreement and, in which case, the following provisions will apply:</p>	5 Performance Monitoring
Clause 5.2.4(d)	<p>Clause 5.2.4(d) has been amended to remove the words “save where there is no evidence that the Provider has been found to have been fraudulent or to have submitted erroneous reports and the Provider has been exonerated”, as follows:</p>	5 Performance Monitoring

Section	Change	Clause Reference
	(d) the Provider will bear its own costs and indemnify and keep the Department indemnified at all times from and against all costs and expenses reasonably and properly incurred by or on behalf of the Department in relation to such increased level of monitoring.	
Clause 10.8	<p>Clause 10.8 has been amended</p> <p>10.8 The Provider must take all reasonable steps to meet the relevant requirements for data gathering for Learner and employer satisfaction data in line with the Department’s requirements that are in place at the relevant time. Providers should note that the Department is currently considering the most useful information to collect from Learners. Information will be updated when it becomes available at Learner and employer satisfaction surveys - GOV.UK (www.gov.uk) and in any subsequent updates to these web pages.</p>	10 Quality Assurance and Raising Standards
Clause 12.8	<p>Clause 12.8 has been amended</p> <p>12.8 The Department will take action based on the Inspectorate’s published outcomes as in Clause 12.6 above. Where the Department is made aware that the Provider has made a complaint about the graded outcome of the overall assessment by Ofsted, the Department will continue to progress action under Clauses 12.5 and 12.6 but will be mindful of the implications arising from the outcome of a complaint. The Department will review any decisions made at such time as outcomes of any complaint are made known.</p>	12 Inspections
Clause 14.4	<p>Clause 14.4 has been amended and split out into 3 new Sub-Clauses</p> <p>14.4 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to:</p>	14 Fraud and Irregularity

Section	Change	Clause Reference
	<p>14.4.1 the delivery of this Agreement; or</p> <p>14.4.2 the delivery of any other agreement between the Department and the Provider; or</p> <p>14.4.3 the payments made under this Agreement or any other agreement between the Department and the Provider;</p> <p>the Department will have the right to suspend payments and/or require the Provider to suspend recruitment of Learners under this Agreement and any other agreement between the Parties.</p>	
Clause 15.2.1	<p>Clause 15.2.1 has been amended</p> <p>15.2.1 The Provider must and will ensure that its Sub-Contractors will at all times during the Agreement Period and for a period of six (6) years thereafter, or such other time period as stated in the Schedule 1 (Specification & Monitoring), at its own cost, fully co-operate with any enquiry, investigation or inspection (whether routine or specific) which in any way concerns, affects or relates to the Services, or any sum claimed or charged in relation to this Agreement or to any other Agreement of the Department. Such enquiry, investigation or inspection may be by, inter alia:-</p>	15 Relationships
Clause 17.4	<p>Clause 17.4 has been added</p> <p>17.4 For the avoidance of doubt, the Department shall not be obliged to follow the Dispute Resolution Procedure in circumstances where it wishes to terminate this Agreement in any circumstances described in Clause 35 (Termination).</p>	17 Dispute Resolution

Section	Change	Clause Reference
<p>Clause 20.5.4</p>	<p>Clause 20.5.4 has been amended to add a new Sub-Clause 20.5.4(a). The existing Sub-Clause 20.5.4(a) has also been amended and renumbered as 20.5.4(b)</p> <p>20.5.4 not make a Restricted Transfer unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:</p> <ul style="list-style-type: none"> (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018; (b) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Data Controller; (c) the Data Subject has enforceable rights and effective legal remedies; (d) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and (e) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data; 	<p>20 Data Protection and Protection of Personal Data</p>

Section	Change	Clause Reference
Clause 20.6.1	<p>Clause 20.6.1 has been amended</p> <p>20.6.1 receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to processing their data under this Agreement only (submission of learner data);</p>	20 Data Protection and Protection of Personal Data
Clause 20.8.2	<p>Clause 20.8.2 has been amended</p> <p>20.8.2 such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;</p>	20 Data Protection and Protection of Personal Data
Clause 20.9.2	<p>Clause 20.9.2 has been amended</p> <p>20.9.2 the Data 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 23	<p>Clause 23 has been amended to include references to “the EIR” throughout</p>	23 Freedom of Information and Confidentiality
Clause 23.2.3(a)	<p>Clause 23.2.3(a) has been amended</p> <p>(a) which is or becomes public knowledge (other than by breach of Clauses 23.2.1 and 23.2.2 or any other duty of confidentiality);</p>	23 Freedom of Information and Confidentiality
Clause 24.4.1	<p>Clause 24.4.1 has been amended</p> <p>24.4.1 they are questioned as to whether they have any Convictions or ASBOs or any other punishment for antisocial behaviour order (such as a</p>	24 Employees

Section	Change	Clause Reference
	civil injunction, community protection notice or criminal behaviour order);	
Clause 24.10	Clause 24.10 has been amended 24.10 Failure by the Provider to comply with Clauses 24.4 to 24.9 will constitute a material breach of agreement.	24 Employees
Clause 24.16	Clause 24.16 has been amended 24.16 The Provider must inform the Department if directors, or any other person who has powers of representation, decision or control, meet the characteristics set out in the Funding Higher-Risk Organisations and Sub-Contractors document. Department for Education policy on funding higher risk organisations and subcontractors - GOV.UK (www.gov.uk) . Failure to inform the Department will be a material breach of agreement.	24 Employees
Clause 24.18	Clause 24.18 has been amended 24.18 The Provider must ensure that it and any Sub-Contractors have in place and maintain personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Provider must ensure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form. The Provider must provide copies of such policies to the Department, on the Department's request.	24 Employees
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 Provider is required to provide under the Agreement to support the payment of Funding, the Department reserves the right at its	26 Payment, Funding and Audit

Section	Change	Clause Reference
	<p>absolute discretion to require the Provider at the Provider's cost to procure an independent 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>	
Clause 28.2.1	<p>Clause 28.2.1 has been amended</p> <p>28.2.1 The Department (in accordance with Post-16 audit code of practice - GOV.UK (www.gov.uk)), the European Commission, the European Court of Auditors and/or a Crown Body may at any time conduct (whether itself or by its agents, consultants or advisers) audits for the following purposes:-</p>	28 Provider's Records and Audits
Clause 28.5.3	<p>Clause 28.5.3 has been amended</p> <p>28.5.3 Where the Department appoints an independent third party to undertake, exercise or carry out any of the rights or powers contained in this Clause 28 (Provider's Records and Audit), the Department must ensure that, simultaneously with its appointment, such independent third party enters into a confidentiality agreement with the Department that requires the independent third party to comply with confidentiality provisions equivalent to those set out in Agreement.</p>	28 Provider's Records and Audits
Clause 29.2	<p>Clause 29.2 has been amended</p> <p>29.2 The Provider should obtain its own advice as to whether the Subsidy Control Rules apply to the Funding received in relation to the Services</p>	29 Subsidy Control

Section	Change	Clause Reference
	delivered under this Agreement. Guidance on this can be found at Complying with the UK's international obligations on subsidy control: guidance for public authorities - GOV.UK (www.gov.uk) .	
Clause 29.3	<p>Clause 29.3 has been amended and Sub-Clauses 29.3.1 and 29.3.2 have been added</p> <p>29.3 Where the rules on Subsidy Control apply, the Provider must:</p> <p>29.3.1 comply with the relevant notification requirements; and</p> <p>29.3.2 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 deleted and replaced with the following:</p> <p>29.6 If a recovery order or any other enforcement measure is taken under the Subsidy Control Act 2022, the Provider will repay the relevant subsidy to the Department within 28 days or such other timescale that the Department agrees with the Provider.</p>	29 Subsidy Control
Clause 31.1.1(g)	<p>Clause 31.1.1(g) has been amended</p> <p>(g) In all other respects, any negligent act, default or breach of statutory duty in connection with the performance or non-performance by the Provider of its obligations under this Agreement or of any Provider Personnel in the performance or non-performance of the Services.</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), Clause 31.8 (No Limit on Liability) and Clause 31.12 (Indirect Loss), 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,</p>	31 Indemnities and Liability

Section	Change	Clause Reference
	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 Subject to Clause 31.8 (No Limit on Liability) and Clause 31.12 (Indirect Loss), the liability of the Department 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 33.4	Clause 33.4 has been amended to remove the words “without the Department’s permission” as follows: 33.4 The Provider will not hold itself out as acting on behalf of the Department.	33 Prohibited Acts
Clause 34.1.10	Clause 34.1.10 has been added 34.1.10 The Department is entitled to withhold or suspend payment of Funding under any other provisions in this Agreement.	34 Withholding, Suspension and Repayment of Funding
Clause 34.2	Clause 34.2 has been added 34.2 Without prejudice to or limiting the provisions of Clause 34.1.1, where more than one breach (which are not material breaches) have occurred, those breaches (taken together) may be regarded as a material breach.	34 Withholding, Suspension and Repayment of Funding
Clause 34.2	Clause 34.2 has been amended and renumbered as Clause 34.3 34.3 Rights to withhold, suspend and/or require repayment of the Funding are set out in other provisions in this Agreement and in the Funding Rules (as amended from time to time)	34 Withholding, Suspension and Repayment of Funding

Section	Change	Clause Reference
Clauses 35 and 36	There have been several amendments to Clause 35 (Termination) and Clause 36 (Consequences of Termination and Expiry). These clauses have been reordered, some duplication has been removed and Clause 36 has been updated to add clauses that have been deleted from Clause 35. Please refer to the revised clauses within your Agreement which incorporate all amendments.	35 Termination 36 Consequences of Termination and Expiry
Clauses 39.1	<p>Clause 39.1 has been amended and Sub-Clauses 39.1.1, 39.1.2 and 39.1.3 have been added</p> <p>39.1 Any notice or other document to be given under this Agreement must be in writing and personally delivered, e-mailed, sent through the Department's electronic portal or sent by first class post to the address of the relevant party, as referred to above or in the case of an email address or correspondence address, as notified by the relevant party in writing from time to time. The notice or communication will be considered delivered as follows:</p> <p>39.1.1 if personally delivered, when handed over to the addressee;</p> <p>39.1.2 if sent by email or through the Department's electronic portal, on the day the email is sent if sent on a Working Day and before 5.00 pm, otherwise the email will be deemed delivered at 9.00 am on the next Working Day;</p> <p>39.1.3 if sent by first class post, on the second Working Day after the day on which it is posted.</p>	39 Service of Notices
Clause 39.2	<p>Clause 39.2 has been amended</p> <p>39.2 All such notices and communications must be in the English language. To prove the giving of a notice or other document it will be sufficient to show that it was despatched.</p>	39 Service of Notices

Section	Change	Clause Reference
<p>Clause 41.1</p>	<p>Clause 41.1 has been renamed “No Partnership, Joint Venture or Employment” and Clause 41.1.1 has been amended to add the words “or joint venture”.</p> <p>41.1 No Partnership, Joint Venture or Employment</p> <p>41.1.1 Nothing in this Agreement will be construed as creating a partnership or joint venture or as an Agreement of employment between the Department and the Provider.</p>	<p>41 No Agency</p>
<p>Clause 41.2</p>	<p>Clause 41.2 has been renamed “No Agency or Power to Bind”</p>	<p>41 No Agency</p>
<p>Clause 43.1</p>	<p>Clause 43.1 and Sub-Clauses 43.1.1 and 43.1.2 have been amended</p> <p>43.1 The Provider must not by itself, its employees or agents and shall procure that its Provider Personnel must not:</p> <p>43.1.1 take part in any communications with representatives of the press, television, radio or other communications media on any matter concerning this Agreement; and/or</p> <p>43.1.2 use or make use of the Department’s name, logo or other branding without the prior written approval of the Department.</p>	<p>43 Public Relations and Publicity</p>
<p>Clause 45.1</p>	<p>Clause 45.1 has been amended</p> <p>45.1 No term or provision of this Agreement will be considered as waived by any Party to this Agreement unless a waiver is given in writing by that Party. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.</p>	<p>45 Waiver</p>

Section	Change	Clause Reference
Subject matter of the Processing	<p>Details have been amended</p> <p>The subject matter is the Personal Data of Learners on education or training programmes administered by the Department that are subject to this Agreement as defined in the Department Personal Information Charter, the privacy notice for Key Stage 5 and adult education and the ILR privacy notice and documentation.</p> <p>Personal information charter - Department for Education - GOV.UK (www.gov.uk)</p> <p>Privacy notice for Key Stage 5 and adult education - GOV.UK (www.gov.uk)</p> <p>ILR Privacy Notice 2023 to 2024 version 1 May 2023 (submit-learner-data.service.gov.uk)</p>	<p>Schedule 6: UK GDPR and Data Protection</p>
Retention and destruction of the data once the processing is complete UNLESS requirement by UK Law to preserve that type of data	<p>Description has been renamed</p> <p>“Plan for return and destruction of the data once the processing is complete UNLESS requirement under Union or Member State law to preserve that type of data”</p>	<p>Schedule 6: UK GDPR and Data Protection</p>
Paragraph 1.2	<p>Paragraph 1.2 has been amended</p> <p>1.2 The Provider must select its Sub-Contractors fairly and without discrimination and must comply with any procurement rules that apply when doing so, including the Public Contracts Regulations 2015 (as may be amended from time to time) where the Provider is a contracting authority under those regulations.</p>	<p>Schedule 9: Sub-Contracting</p>

Section	Change	Clause Reference
<p>Various paragraphs</p>	<p>Paragraphs 1.4, 1.8.1, 1.12, 1.20, 1.21, 1.27 and 1.28 of Schedule 9: Sub-Contracting have been amended to include references to the relevant headings in the Sub-Contracting Funding Rules</p> <p>Paragraphs 1.27 and 1.28 have also been renumbered as Paragraphs 1.25 and 1.26.</p>	<p>Schedule 9: Sub-Contracting</p>
<p>Paragraphs 1.22 and 1.23</p>	<p>Paragraphs 1.22 and 1.23 have been deleted</p>	<p>Schedule 9: Sub-Contracting</p>
<p>Paragraph 1.24</p>	<p>Paragraph 1.24 has been amended and renumbered as Paragraph 1.22</p> <p>1.22 The Provider must continuously review the size of its sub-contracted Services and ensure this does not exceed the Sub-Contracting Threshold of 25%.</p>	<p>Schedule 9: Sub-Contracting</p>
<p>Paragraph 1.25 and 1.26</p>	<p>Paragraphs 1.25 and 1.26 have been deleted and replaced with the new Paragraphs 1.23 and 1.24</p> <p>1.23 The Provider must promptly submit an Exemption Case (as defined in the Sub-Contracting Funding Rules) if it anticipates that its Sub-Contracting will exceed the Sub-Contracting Threshold. The Provider must submit such Exemption Case no less than twelve (12) weeks prior to exceeding the Sub-Contracting Threshold. The Department may consider Exemption Cases that are submitted later if the Provider provides evidence of exceptional circumstances. The Department reserves the right to decline the Provider's Exemption Case.</p> <p>1.24 If the Provider has previously submitted an Exemption Case, it should continue to seek permission to exceed the Sub-Contracting Threshold and must submit an Exemption Case to the Department by no later than 11.59pm on 31 March in each Funding Year. The Department may</p>	<p>Schedule 9: Sub-Contracting</p>

Section	Change	Clause Reference
	<p>consider Exemption Cases that are submitted later if the Provider provides evidence of exceptional circumstances. The Department reserves the right to decline the Provider's Exemption Case.</p>	
<p>Paragraph 1.31</p>	<p>Paragraph 1.31 has been amended and renumbered as Paragraph 1.29</p> <p>1.29 If the aggregate total of all Sub-Contractors delivering ESFA funded provision on the Provider's behalf exceeds or is anticipated to exceed £100,000 in any academic year, the Provider must meet the requirements detailed in ESFA subcontracting standard - GOV.UK (www.gov.uk). The £100,000 threshold includes Apprenticeships, ESFA-Funded Adult Education Budget and 16 to 19 provision sub-contracted by the Provider.</p>	<p>Schedule 9: Sub-Contracting</p>

Conditions of Funding (Grant) (Employers)

Section	Change	Clause Reference
Entire Agreement	All references to “Accountability Framework” have been replaced with “Apprenticeship Accountability Framework”	Entire Agreement
Entire Agreement	All references to “Her Majesty” have been deleted and replaced with “His Majesty” throughout the Agreement	Entire Agreement
Entire Agreement	All references to “Register of Apprenticeship Training Providers” including the definition in Clause 1 have been amended to “Apprenticeship Provider Assessment Register” throughout the Agreement.	Entire Agreement
“Department”	Definition has been amended means the Secretary of State for Education acting through the Department for Education and / or Education and Skills Funding Agency (ESFA) as appropriate;	1 Definitions
“Earnings Adjustment Statement”	Definition has been amended means Earnings adjustment statement (EAS) - GOV.UK (www.gov.uk) as updated and amended from time to time;	1 Definitions
“EIR”	Definition has been added means the Environmental Information Regulations 2004;	1 Definitions
“Exemption Case”	Definition has been amended means the case submitted by the Employer to the Department in accordance with “Subcontracting threshold and exemption cases” of the Sub-	1 Definitions

Section	Change	Clause Reference
	Contracting Funding Rules for permission to exceed the Sub-Contracting Threshold;	
“Funding Higher Risk Organisations Policy”	Definition has been added means the policy described in Schedule 9: Sub-Contracting and available at Funding higher risk organisations and subcontractors policy - GOV.UK (www.gov.uk)	1 Definitions
“Funding Period”	Definition has been added means the period set out on page 1 of this Agreement.	1 Definitions
“Sub-Contract”	Definition has been amended means an agreement entered into between the Employer and a Sub-Contractor for the purposes of engaging the Sub-Contractor to deliver part of the Services on behalf of the Employer;	1 Definitions
“Sub-Contracting”	Definition has been added means any delivery to a Learner’s programme of learning by a separate legal entity, irrespective of whether such learning is provided by a third party recruited to deliver on site (travel to teach), online learning or whether it is described as a service;	1 Definitions
“Sub-Contractor”	Definition has been amended means a separate legal entity or an individual (not an employee) that has an agreement (called a Sub-Contract) with the Employer to deliver any element of the Services the Department funds. A separate legal entity includes but is not limited to companies in the Employer’s group, other associated companies and sole traders. An individual could include a person who is a sole trader, self-employed, a freelancer or someone who is employed by an agency, unless those individuals are working under the Employer’s direct management and control in	1 Definitions

Section	Change	Clause Reference
	the same way as the Employer’s own employees. This does not include relationships between the Employer and other third parties providing services such as marketing;	
Clause 3.5	Clause 3.5 has been added 3.5 The Employer will comply in all respects with all relevant Laws to which it may be subject.	3 Service Delivery
Clause 5.2.3	Clause 5.2.3 has been amended 5.2.3 Without prejudice to the Department’s rights under Clauses 34 (Withholding, Suspension and Repayment of Funding) and 35.2 (Termination) and to any other express rights under this Agreement, where the Employer has been found to be fraudulent or have recklessly submitted erroneous reports, claims and/or learner data, or the Department reasonably believes such reports to be fraudulent or erroneous the Department may, by notice to the Employer, increase the level of its monitoring of the Employer or (at the Department’s option) require the Employer to increase the level of the Employer’s monitoring of its own performance of its obligations under this Agreement in respect of the relevant Services which are the subject of such fraudulent, erroneous or misleading reporting until such time as the Employer must have demonstrated to the reasonable satisfaction of the Department that it will perform (and is capable of performing) its obligations under this Agreement and , in which case, the following provisions will apply:	5 Performance Monitoring
Clause 5.2.3(d)	Clause 5.2.3(d) has been amended to remove the words “save where there is no evidence that the Employer has been found to have been fraudulent or to	5 Performance Monitoring

Section	Change	Clause Reference
	<p>have submitted erroneous reports and the Employer has been exonerated”, as follows:</p> <p>(d) the Employer will bear its own costs and indemnify and keep the Department indemnified at all times from and against all costs and expenses reasonably and properly incurred by or on behalf of the Department in relation to such increased level of monitoring.</p>	
Clause 10.7	<p>Clause 10.7 has been amended</p> <p>10.7 The Employer must take all reasonable steps to meet the relevant requirements for data gathering for the Learner and employer satisfaction data in line with the Department’s requirements that are in place at the relevant time. Employers should note that the Department is currently considering the most useful information to collect from Learners. Information will be updated when it becomes available at Learner and employer satisfaction surveys - GOV.UK (www.gov.uk) and in any subsequent updates to these web pages.</p>	10 Quality Assurance and Raising Standards
Clause 12.7	<p>Clause 12.7 has been amended</p> <p>12.7 The Department will take action based on the Inspectorate’s published outcomes as in Clause 12.5 above. Where the Department is made aware that the Employer has made a complaint about the graded outcome of the overall assessment by Ofsted, the Department will continue to progress action under Clauses 12.4 to 12.5 but will be mindful of the implications arising from the outcome of a complaint. The Department will review any decisions made at such time as outcomes of any complaint are made known.</p>	12 Inspections
Clause 14.4	<p>Clause 14.4 has been amended and split out into 3 new Sub-Clauses</p>	14 Fraud and Irregularity

Section	Change	Clause Reference
	<p>14.4 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to:</p> <p>14.4.1 the delivery of this Agreement; or</p> <p>14.4.2 the delivery of any other agreement between the Department and the Employer; or</p> <p>14.4.3 the payments made under this Agreement or any other agreement between the Department and the Employer;</p> <p>the Department will have the right to suspend payments and/or require the Employer to suspend recruitment of Learners under this Agreement and any other agreement between the Parties.</p>	
<p>Clause 15.2.1</p>	<p>Clause 15.2.1 has been amended</p> <p>15.2.1 The Employer must and will ensure that its Sub-Contractors will at all times during the Agreement Period and for a period of six (6) years thereafter, or such other time period as stated in Schedule 1 (Specification & Monitoring), at it's own cost, fully co-operate with any enquiry, investigation or inspection (whether routine or specific) which in any way concerns, affects or relates to the Services, or any sum claimed or charged in relation to this Agreement or to any other Agreement of the Department. Such enquiry, investigation or inspection may be by, inter alia:-</p>	<p>15 Relationships</p>
<p>Clause 17.4</p>	<p>Clause 17.4 has been added</p> <p>17.4 For the avoidance of doubt, the Department shall not be obliged to follow the Dispute Resolution Procedure in circumstances where it wishes to terminate this Agreement in any circumstances described in Clause 35 (Termination).</p>	<p>17 Dispute Resolution</p>

Section	Change	Clause Reference
<p>Clause 20.4.4</p>	<p>Clause 20.4.4 has been amended to add a new Sub-Clause 20.4.4(a). The existing Sub-Clause 20.4.4(a) has also been amended and renumbered as 20.4.4(b)</p> <p>20.4.4 not make a Restricted Transfer unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:</p> <ul style="list-style-type: none"> (h) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018; (i) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Data Controller; (j) the Data Subject has enforceable rights and effective legal remedies; (k) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and (l) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data; 	<p>20 Data Protection and Protection of Personal Data</p>

Section	Change	Clause Reference
Clause 20.5.1	<p>Clause 20.5.1 has been amended</p> <p>30.2.1 receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to processing their data under this Agreement only (submission of learner data);</p>	20 Data Protection and Protection of Personal Data
Clause 20.7.2	<p>Clause 20.7.2 has been amended</p> <p>20.7.2 such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;</p>	20 Data Protection and Protection of Personal Data
Clause 20.8.2	<p>Clause 20.8.2 has been amended</p> <p>20.8.2 the Data Controller determines the processing includes special categories of data as referred to in the 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 23	<p>Clause 23 has been amended to include references to “the EIR” throughout</p>	23 Freedom of Information and Confidentiality
Clause 23.2.3(a)	<p>Clause 23.2.3(a) has been amended</p> <p>(a) which is or becomes public knowledge (other than by breach of Clauses 23.2.1 and 23.2.2 or any other duty of confidentiality);</p>	23 Freedom of Information and Confidentiality
Clause 24.4.1	<p>Clause 24.4.1 has been amended</p> <p>24.4.1 they are questioned as to whether they have any Convictions or ASBOs or any other punishment for antisocial behaviour order (such as a</p>	24 Employees

Section	Change	Clause Reference
	civil injunction, community protection notice or criminal behaviour order);	
Clause 24.10	Clause 24.10 has been amended 24.10 Failure by the Employer to comply with Clauses 24.4 to 24.9 will constitute a material breach of agreement.	24 Employees
Clause 24.16	Clause 24.16 has been amended 24.16 The Employer must inform the Department if directors, or any other person who has powers of representation, decision or control, meet the characteristics set out in the Funding Higher-Risk Organisations and Sub-Contractors document. Department for Education policy on funding higher risk organisations and subcontractors - GOV.UK (www.gov.uk) . Failure to inform the Department will be a material breach of agreement.	24 Employees
Clause 24.18	Clause 24.18 has been amended 24.18 The Employer must ensure that it and any Sub-Contractors have in place and maintain personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Employer must ensure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form. The Employer must provide copies of such policies to the Department, on the Department's request.	24 Employees
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	26 Payment, Funding and Audit

Section	Change	Clause Reference
	<p>its absolute discretion to require the Employer at the Employer's cost to procure an independent 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.</p>	
<p>Clause 28.2.1</p>	<p>Clause 28.2.1 has been amended</p> <p>28.2.1 The Department (in accordance with Post-16 audit code of practice - GOV.UK (www.gov.uk)), the European Commission, the European Court of Auditors and/or a Crown Body may at any time conduct (whether itself or by its agents, consultants or advisers) audits for the following purposes:-</p>	<p>28 Employer's Records and Audits</p>
<p>Clause 28.5.3</p>	<p>Clause 28.5.3 has been amended</p> <p>28.5.3 Where the Department appoints an independent third party to undertake, exercise or carry out any of the rights or powers contained in this Clause 28 (Employer's Records and Audit), the Department must ensure that, simultaneously with its appointment, such independent third party enters into a confidentiality agreement with the Department that requires the independent third party to comply with confidentiality provisions equivalent to those set out in Agreement.</p>	<p>28 Employer's Records and Audits</p>
<p>Clause 29.1</p>	<p>Clause 29.1 has been amended</p> <p>29.1 The Employer should obtain its own advice as to whether the Subsidy Control Rules apply to the Funding received in relation to the Services</p>	<p>29 Subsidy Control</p>

Section	Change	Clause Reference
	delivered under this Agreement. Guidance on this can be found at Complying with the UK's international obligations on subsidy control: guidance for public authorities - GOV.UK (www.gov.uk) .	
Clause 29.2	<p>Clause 29.2 has been amended and Sub-Clauses 29.2.1 and 29.2.2 have been added</p> <p>29.2 Where the rules on Subsidy Control apply, the Employer must:</p> <p>29.2.1 comply with the relevant notification requirements; and</p> <p>29.2.2 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 deleted and replaced with the following:</p> <p>29.5 If a recovery order or any other enforcement measure is taken under the Subsidy Control Act 2022, the Employer will repay the relevant subsidy to the Department within 28 days or such other timescale that the Department agrees with the Employer.</p>	29 Subsidy Control
Clause 31.1.1(g)	<p>Clause 31.1.1(g) has been amended</p> <p>(g) In all other respects, any negligent act, default or breach of statutory duty in connection with the performance or non-performance by the Employer of its obligations under this Agreement or of any Employer Personnel in the performance or non-performance of the Services.</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), Clause 31.8 (No Limit on Liability) and Clause 31.12 (Indirect Loss), 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,</p>	31 Indemnities and Liability

Section	Change	Clause Reference
	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 Subject to Clause 31.8 (No Limit on Liability) and Clause 31.12 (Indirect Loss), the liability of the Department 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 33.4	Clause 33.4 has been amended to remove the words “without the Department’s permission” as follows: 33.4 The Employer will not hold itself out as acting on behalf of the Department.	33 Prohibited Acts
Clause 34.1.10	Clause 34.1.10 has been added 34.1.10 The Department is entitled to withhold or suspend payment of Funding under any other provisions in this Agreement.	34 Withholding, Suspension and Repayment of Funding
Clause 34.2	Clause 34.2 has been added 34.2 Without prejudice to or limiting the provisions of Clause 34.1.1, where more than one breach (which are not material breaches) have occurred, those breaches (taken together) may be regarded as a material breach.	34 Withholding, Suspension and Repayment of Funding
Clause 34.2	Clause 34.2 has been amended and renumbered as Clause 34.3 34.3 Rights to withhold, suspend and/or require repayment of the Funding are set out in other provisions in this Agreement and in the Funding Rules (as amended from time to time)	34 Withholding, Suspension and Repayment of Funding

Section	Change	Clause Reference
Clauses 35 and 36	There have been several amendments to Clause 35 (Termination) and Clause 36 (Consequences of Termination and Expiry). These clauses have been reordered, some duplication has been removed and Clause 36 has been updated to add clauses that have been deleted from Clause 35. Please refer to the revised clauses within your Agreement which incorporate all amendments.	35 Termination 36 Consequences of Termination and Expiry
Clause 39.1	<p>Clause 39.1 has been amended and Sub-Clauses 39.1.1, 39.1.2 and 39.1.3 have been added</p> <p>39.1 Any notice or other document to be given under this Agreement must be in writing and personally delivered, emailed, sent through the Department's electronic portal or sent by first class post to the address of the relevant party, as referred to above or in the case of an email address or correspondence address, as notified by the relevant party in writing from time to time. The notice or communication will be considered delivered as follows:</p> <p>39.1.1 If personally delivered, when handed over to the addressee;</p> <p>39.1.2 if sent by email or through the Department's electronic portal, on the day the email is sent if sent on a Working Day and before 5.00 pm, otherwise the email will be deemed delivered at 9.00 am on the next Working Day;</p> <p>39.1.3 if sent by first class post, on the second Working Day after the day on which it is posted.</p>	39 Service of Notices
Clause 39.2	<p>Clause 39.2 has been amended</p> <p>39.2 All such notices and communications must be in the English language. To prove the giving of a notice or other document it will be sufficient to show that it was despatched.</p>	39 Service of Notices

Section	Change	Clause Reference
<p>Clause 41.1</p>	<p>Clause 41.1 has been renamed “No Partnership, Joint Venture or Employment” and Clause 41.1.1 has been amended to add the words “or joint venture”.</p> <p>41.2 No Partnership, Joint Venture or Employment</p> <p>41.2.1 Nothing in this Agreement will be construed as creating a partnership or joint venture or as an Agreement of employment between the Department and the Employer.</p>	<p>41 No Agency</p>
<p>Clause 41.2</p>	<p>Clause 41.2 has been renamed “No Agency or Power to Bind”</p>	<p>41 No Agency</p>
<p>Clause 43.1</p>	<p>Clause 43.1 and Sub-Clauses 43.1.1 and 43.1.2 have been amended</p> <p>43.2 The Employer must not by itself, its employees or agents and shall procure that its Employer Personnel must not:</p> <p>43.2.1 take part in any communications with representatives of the press, television, radio or other communications media on any matter concerning this Agreement; and/or</p> <p>43.2.2 use or make use of the Department’s name, logo or other branding without the prior written approval of the Department.</p>	<p>43 Public Relations and Publicity</p>
<p>Clause 45.1</p>	<p>Clause 45.1 has been amended</p> <p>45.1 No term or provision of this Agreement will be considered as waived by any Party to this Agreement unless a waiver is given in writing by that Party. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.</p>	<p>45 Waiver</p>

Section	Change	Clause Reference
Subject matter of the Processing	<p>Details have been amended</p> <p>The subject matter is the Personal Data of Learners on education or training programmes administered by the Department that are subject to this Agreement as defined in the Department Personal Information Charter, the privacy notice for Key Stage 5 and adult education and the ILR privacy notice and documentation.</p> <p>Personal information charter - Department for Education - GOV.UK (www.gov.uk)</p> <p>Privacy notice for Key Stage 5 and adult education - GOV.UK (www.gov.uk)</p> <p>ILR Privacy Notice 2023 to 2024 version 1 May 2023 (submit-learner-data.service.gov.uk)</p>	<p>Schedule 6: UK GDPR and Data Protection</p>
<p>Retention and destruction of the data once the processing is complete</p> <p>UNLESS requirement by (UK) Law to preserve that type of data</p>	<p>Description has been renamed</p> <p>“Plan for return and destruction of the data once the processing is complete UNLESS requirement under Union or Member State law to preserve that type of data”</p>	<p>Schedule 6: UK GDPR and Data Protection</p>
<p>Paragraph 1.2</p>	<p>Paragraph 1.2 has been amended</p> <p>The Employer must select its Sub-Contractors fairly and without discrimination and must comply with any procurement rules that apply when doing so, including the Public Contracts Regulations 2015 (as may be amended from time to time) where the Employer is a contracting authority under those regulations.</p>	<p>Schedule 9: Sub-Contracting</p>

Section	Change	Clause Reference
<p>Various paragraphs</p>	<p>Paragraphs 1.4, 1.8.1, 1.12, 1.20, 1.21, 1.27 and 1.28 of Schedule 9: Sub-Contracting have been amended to include references to the relevant headings in the Sub-Contracting Funding Rules</p> <p>Paragraphs 1.27 and 1.28 have also been renumbered as Paragraphs 1.25 and 1.26.</p>	<p>Schedule 9: Sub-Contracting</p>
<p>Paragraphs 1.22 and 1.23</p>	<p>Paragraphs 1.22 and 1.23 have been deleted</p>	<p>Schedule 9: Sub-Contracting</p>
<p>Paragraph 1.24</p>	<p>Paragraph 1.24 has been amended and renumbered as Paragraph 1.22</p> <p>1.24 The Employer must continuously review the size of its sub-contracted Services and ensure this does not exceed the Sub-Contracting Threshold of 25%.</p>	<p>Schedule 9: Sub-Contracting</p>
<p>Paragraph 1.25 and 1.26</p>	<p>Paragraphs 1.25 and 1.26 have been deleted and replaced with the new Paragraphs 1.23 and 1.24</p> <p>1.23 The Employer must promptly submit an Exemption Case (as defined in the Sub-Contracting Funding Rules) if it anticipates that its Sub-Contracting will exceed the Sub-Contracting Threshold. The Employer must submit such Exemption Case no less than twelve (12) weeks prior to exceeding the Sub-Contracting Threshold. The Department may consider Exemption Cases that are submitted later if the Employer provides evidence of exceptional circumstances. The Department reserves the right to decline the Employer's Exemption Case.</p> <p>1.24 If the Employer has previously submitted an Exemption Case, it should continue to seek permission to exceed the Sub-Contracting Threshold and must submit an Exemption Case to the Department by no later than 11.59pm on 31 March in each Funding Year. The Department may</p>	<p>Schedule 9: Sub-Contracting</p>

Section	Change	Clause Reference
	<p>consider Exemption Cases that are submitted later if the Employer provides evidence of exceptional circumstances. The Department reserves the right to decline the Employer's Exemption Case.</p>	
<p>Paragraph 1.31</p>	<p>Paragraph 1.31 has been amended and renumbered as Paragraph 1.29</p> <p>1.29 If the aggregate total of all Sub-Contractors delivering ESFA funded provision on the Employer's behalf exceeds or is anticipated to exceed £100,000 in any academic year, the Employer must meet the requirements detailed in ESFA subcontracting standard - GOV.UK (www.gov.uk). The £100,000 threshold includes Apprenticeships, ESFA-Funded Adult Education Budget and 16 to 19 provision sub-contracted by the Employer.</p>	<p>Schedule 9: Sub-Contracting</p>

Conditions of Funding (Grant) (HEI)

Section	Change	Clause Reference
Entire Agreement	All references to “Accountability Framework” have been replaced with “Apprenticeship Accountability Framework”	Entire Agreement
Entire Agreement	All references to “Her Majesty” have been deleted and replaced with “His Majesty” throughout the Agreement	Entire Agreement
Entire Agreement	All references to “Register of Apprenticeship Training Providers” including the definition in Clause 1 have been amended to “Apprenticeship Provider Assessment Register” throughout the Agreement.	Entire Agreement
“Department”	Definition has been amended means the Secretary of State for Education acting through the Department for Education and / or Education and Skills Funding Agency (ESFA) as appropriate;	1 Definitions
“Earnings Adjustment Statement”	Definition has been amended means Earnings adjustment statement (EAS) - GOV.UK (www.gov.uk) as updated and amended from time to time;	1 Definitions
“EIR”	Definition has been added means the Environmental Information Regulations 2004;	1 Definitions
“Exemption Case”	Definition has been amended means the case submitted by the Provider to the Department in accordance with “Subcontracting threshold and exemption cases” of the Sub-Contracting Funding Rules for permission to exceed the Sub-Contracting Threshold;	1 Definitions

Section	Change	Clause Reference
“Funding Higher Risk Organisations Policy”	Definition has been added means the policy described in Schedule 9: Sub-Contracting and available at Funding higher risk organisations and subcontractors policy - GOV.UK (www.gov.uk)	1 Definitions
“Funding Period”	Definition has been added means the period set out on page 1 of this Agreement.	1 Definitions
“Sub-Contract”	Definition has been amended means an agreement entered into between the Provider and a Sub-Contractor for the purposes of engaging the Sub-Contractor to deliver part of the Services on behalf of the Provider;	1 Definitions
“Sub-Contracting”	Definition has been added means any delivery to a Learner’s programme of learning by a separate legal entity, irrespective of whether such learning is provided by a third party recruited to deliver on site (travel to teach), online learning or whether it is described as a service.	1 Definitions
“Sub-Contractor”	Definition has been amended means a separate legal entity or an individual (not an employee) that has an agreement (called a Sub-Contract) with the Provider to deliver any element of the Services the Department funds. A separate legal entity includes but is not limited to companies in the Provider’s group, other associated companies and sole traders. An individual could include a person who is a sole trader, self-employed, a freelancer or someone who is employed by an agency, unless those individuals are working under the Provider’s direct management and control in the same way as the Provider’s own employees. This does not include	1 Definitions

Section	Change	Clause Reference
	relationships between the Provider and other third parties providing services such as marketing.	
Clause 3.6	<p>Clause 3.6 has been added</p> <p>3.6 The Provider will comply in all respects with all relevant Laws to which it may be subject.</p>	3 Service Delivery
Clause 5.2.3	<p>Clause 5.2.3 has been amended</p> <p>5.2.3 Without prejudice to the Department’s rights under Clauses 34 (Withholding, Suspension and Repayment of Funding) and 35.2 (Termination) and to any other express rights under this Agreement, where the Provider has been found to be fraudulent or have recklessly submitted erroneous reports, claims and/or learner data, or the Department reasonably believes such reports to be fraudulent or erroneous the Department may, by notice to the Provider, increase the level of its monitoring of the Provider or (at the Department’s option) require the Provider to increase the level of the Provider's monitoring of its own performance of its obligations under this Agreement in respect of the relevant Services which are the subject of such fraudulent, erroneous or misleading reporting until such time as the Provider must have demonstrated to the reasonable satisfaction of the Department that it will perform (and is capable of performing) its obligations under this Agreement and, in which case, the following provisions will apply:</p>	5 Performance Monitoring
Clause 5.2.3(d)	<p>Clause 5.2.3(d) has been amended to remove the words “save where there is no evidence that the Provider has been found to have been fraudulent or to have submitted erroneous reports and the Provider has been exonerated” as follows:</p> <p>(d) the Provider will bear its own costs and indemnify and keep the Department indemnified at all times from and against all costs and</p>	5 Performance Monitoring

Section	Change	Clause Reference
	<p>expenses reasonably and properly incurred by or on behalf of the Department in relation to such increased level of monitoring.</p>	
<p>Clause 10.7</p>	<p>Clause 10.7 has been amended</p> <p>10.7 The Provider must take all reasonable steps to meet the relevant requirements for data gathering for the Learner and Employer satisfaction data in line with the Department’s requirements that are in place at the relevant time. Providers should note that the Department is currently considering the most useful information to collect from Learners. Information will be updated when it becomes available at Learner and employer satisfaction data: information for providers - GOV.UK (www.gov.uk) and in any subsequent updates to these web pages.</p>	<p>10 Quality Assurance and Raising Standards</p>
<p>Clause 12.8</p>	<p>Clause 12.8 has been amended</p> <p>12.8 The Department will take action based on the Inspectorate’s published outcomes as in Clause 12.6 above. Where the Department is made aware that the Provider has made a complaint about the graded outcome of the overall assessment by Ofsted, the Department will continue to progress action under Clauses 12.5 to 12.6 but will be mindful of the implications arising from the outcome of a complaint. The Department will review any decisions made at such time as outcomes of any complaint are made known.</p>	<p>12 Inspections</p>
<p>Clause 14.4</p>	<p>Clause 14.4 has been amended and split out into 3 new Sub-Clauses</p> <p>14.4 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to:</p> <p>14.4.1 the delivery of this Agreement; or</p>	<p>14 Fraud and Irregularity</p>

Section	Change	Clause Reference
	<p>14.4.2 the delivery of any other agreement between the Department and the Provider; or</p> <p>14.4.3 the payments made under this Agreement or any other agreement between the Department and the Provider, the Department will have the right to suspend payments and/or require the Provider to suspend recruitment of Learners under this Agreement and any other agreement between the Parties.</p>	
Clause 15.2.1	<p>Clause 15.2.1 has been amended</p> <p>15.2.1 The Provider must and will ensure that its Sub-Contractors will at all times during the Agreement Period and for a period of six (6) years thereafter, or such other time period as stated in Schedule 1 (Specification & Monitoring), at it's own cost, fully co-operate with any enquiry, investigation or inspection (whether routine or specific) which in any way concerns, affects or relates to the Services, or any sum claimed or charged in relation to this Agreement or to any other Agreement of the Department. Such enquiry, investigation or inspection may be by, inter alia:-</p>	15 Relationships
Clause 17.4	<p>Clause 17.4 has been added</p> <p>17.4 For the avoidance of doubt, the Department shall not be obliged to follow the Dispute Resolution Procedure in circumstances where it wishes to terminate this Agreement in any circumstances described in Clause 35 (Termination).</p>	17 Dispute Resolution
Clause 20.4.4	<p>Clause 20.4.4 has been amended to add a new Sub-Clause 20.4.4(a). The existing Sub-Clause 20.4.4(a) has also been amended and renumbered as 20.4.4(b)</p>	20 Data Protection and Protection of Personal Data

Section	Change	Clause Reference
	<p>20.4.4 not make a Restricted Transfer unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:</p> <ul style="list-style-type: none"> (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018; (b) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Data Controller; (c) the Data Subject has enforceable rights and effective legal remedies; (d) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and (e) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data; 	
<p>Clause 20.5.1</p>	<p>Clause 20.5.1 has been amended</p> <p>20.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to processing their data under this Agreement only (submission of learner data);</p>	<p>20 Data Protection and Protection of Personal Data</p>

Section	Change	Clause Reference
Clause 20.7.2	<p>Clause 20.7.2 has been amended</p> <p>20.7.2 such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;</p>	20 Data Protection and Protection of Personal Data
Clause 20.8.2	<p>Clause 20.8.2 has been amended</p> <p>20.8.2 the Data Controller determines the processing includes special categories of data as referred to in the 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 23	<p>Clause 23 has been amended to include references to “the EIR” throughout</p>	23 Freedom of Information and Confidentiality
Clause 23.2.3 (a)	<p>Clause 23.2.3 (a) has been amended</p> <p>(a) which is or becomes public knowledge (other than by breach of Clauses 23.2.1 and 23.2.2 or any other duty of confidentiality);</p>	23 Freedom of Information and Confidentiality
Clause 24.4.1	<p>Clause 24.4.1 has been amended</p> <p>24.4.1 they are questioned as to whether they have any Convictions or ASBOs or any other punishment for antisocial behaviour order (such as a civil injunction, community protection notice or criminal behaviour order);</p>	24 Employees
Clause 24.10	<p>Clause 24.10 has been amended</p>	24 Employees

Section	Change	Clause Reference
	24.10 Failure by the Provider to comply with Clauses 24.4 to 24.9 will constitute a material breach of agreement.	
Clause 24.16	<p>Clause 24.16 has been amended</p> <p>24.16 The Provider must inform the Department if directors, or any other person who has powers of representation, decision or control, meet the characteristics set out in the Funding Higher-Risk Organisations and Sub-Contractors document. Department for Education policy on funding higher risk organisations and subcontractors - GOV.UK (www.gov.uk). Failure to inform the Department will be a material breach of agreement.</p>	24 Employees
Clause 24.18	<p>Clause 24.18 has been amended</p> <p>24.18 The Provider must ensure that it and any Sub-Contractors have in place and maintain personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Provider must ensure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form. The Provider must provide copies of such policies to the Department, on the Department's request.</p>	24 Employees
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 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 procure an independent 100% audit of all or part of the Services by a deadline specified by the Department and/or to require the Provider to</p>	26 Payment, Funding and Audit

Section	Change	Clause Reference
	<p>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>Clause 28.2.1</p>	<p>Clause 28.2.1 has been amended</p> <p>28.2.1 The Department (in accordance with Post-16 audit code of practice - GOV.UK (www.gov.uk)), the European Commission, the European Court of Auditors and/or a Crown Body may at any time conduct (whether itself or by its agents, consultants or advisers) audits for the following purposes:-</p>	<p>28 Provider's Records and Audit</p>
<p>Clause 28.5.3</p>	<p>Clause 28.5.3 has been amended</p> <p>28.5.3 Where the Department appoints an independent third party to undertake, exercise or carry out any of the rights or powers contained in this Clause 28 (Provider's Records and Audit), the Department must ensure that, simultaneously with its appointment, such independent third party enters into a confidentiality agreement with the Department that requires the independent third party to comply with confidentiality provisions equivalent to those set out in this Agreement.</p>	<p>28 Provider's Records and Audit</p>
<p>Clause 29.1</p>	<p>Clause 29.1 has been amended</p> <p>29.1 The Provider should obtain its own advice as to whether 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 Complying with the UK's international obligations on subsidy control: guidance for public authorities - GOV.UK (www.gov.uk).</p>	<p>29 Subsidy Control</p>

Section	Change	Clause Reference
Clause 29.2	<p>Clause 29.2 has been amended and Sub-Clauses 29.2.1 and 29.2.2 have been added</p> <p>29.2 Where the rules on Subsidy Control apply, the Provider must:</p> <p>29.2.1 comply with the relevant notification requirements; and</p> <p>29.2.2 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 deleted and replaced with the following:</p> <p>29.5 If a recovery order or any other enforcement measure is taken under the Subsidy Control Act 2022, the Provider will repay the relevant subsidy to the Department within 28 days or such other timescale that the Department agrees with the Provider.</p>	29 Subsidy Control
Clause 31.1.1 (g)	<p>Clause 31.1.1 (g) has been amended</p> <p>(g) In all other respects, any negligent act, default or breach of statutory duty in connection with the performance or non-performance by the Provider of its obligations under this Agreement or of any Provider Personnel in the performance or non-performance of the Services.</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), Clause 31.8 (No Limit on Liability) and Clause 31.12 (Indirect Loss), 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),</p>	31 Indemnities and Liability

Section	Change	Clause Reference
	breach of agreement or otherwise under or in connection with this Agreement.	
Clause 31.11.1	<p>Clause 31.11.1 has been amended</p> <p>31.11.1 Subject to Clause 31.8 (No Limit on Liability) and Clause 31.12 (Indirect Loss), the liability of the Department 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.</p>	31 Indemnities and Liability
Clause 33.4	<p>Clause 33.4 has been amended to remove the words “without the Department’s permission” as follows:</p> <p>33.4 The Provider will not hold itself out as acting on behalf of the Department.</p>	33 Prohibited Acts
Clause 34.1.10	<p>Clause 34.1.10 has been added</p> <p>34.1.10 The Department is entitled to withhold or suspend payment of Funding under any other provisions in this Agreement.</p>	34 Withholding, Suspension and Repayment of Funding
Clause 34.2	<p>Clause 34.2 has been added</p> <p>34.2 Without prejudice to or limiting the provisions of Clause 34.1.1, where more than one breach (which are not material breaches) have occurred, those breaches (taken together) may be regarded as a material breach.</p>	34 Withholding, Suspension and Repayment of Funding
Clause 34.2	<p>Clause 34.2 has been amended and renumbered as 34.3</p> <p>34.3 Rights to withhold, suspend and/or require repayment of the Funding are set out in other provisions in this Agreement and in the Funding Rules (as amended from time to time).</p>	34 Withholding, Suspension and Repayment of Funding

Section	Change	Clause Reference
Clause 35 and 36	There have been several amendments to Clause 35 (Termination) and Clause 36 (Consequences of Termination and Expiry). These clauses have been reordered, some duplication has been removed and Clause 36 has been updated to add clauses that have been deleted from Clause 35. Please refer to the revised clauses within your Agreement which incorporate all amendments.	Clause 35 Termination and Clause 36 Consequences of Termination and Expiry
Clause 39.1	<p>Clause 39.1 has been amended and Sub-Clauses 39.1.1, 39.1.2 and 39.1.3 have been added</p> <p>39.1 Any notice or other document to be given under this Agreement must be in writing and personally delivered, e-mailed, sent through the Department's electronic portal or sent by first class post to the address of the relevant party, as referred to above or in the case of an email address or correspondence address, as notified by the relevant party in writing from time to time. The notice or communication will be considered delivered as follows:</p> <p>39.1.1 if personally delivered, when handed over to the addressee;</p> <p>39.1.2 if sent by email or through the Department's electronic portal, on the day the email is sent if sent on a Working Day and before 5.00 pm, otherwise the email will be deemed delivered at 9.00 am on the next Working Day;</p> <p>39.1.3 if sent by first class post, on the second Working Day after the day on which it is posted.</p>	39 Service of Notices
Clause 39.2	<p>Clause 39.2 has been amended</p> <p>39.2 All such notices and communications must be in the English language.</p>	39 Service of Notices

Section	Change	Clause Reference
	To prove the giving of a notice or other document it will be sufficient to show that it was despatched.	
Clause 41.1	<p>Clause 41.1 has been renamed “No Partnership, Joint Venture or Employment” and Clause 41.1.1 has been amended to add the words “or joint venture”</p> <p>41.1 No Partnership, Joint Venture or Employment</p> <p>41.1.1 Nothing in this Agreement will be construed as creating a partnership or joint venture or as an Agreement of employment between the Department and the Provider.</p>	41 No Agency
Clause 41.2	Clause 41.2 has been renamed “ No Agency or Power to Bind ”	41 No Agency
Clause 43.1	<p>Clause 43.1 and Sub-Clauses 43.1.1 and 43.1.2 have been amended</p> <p>43.1 The Provider must not by itself, its employees or agents and shall procure that its Provider Personnel must not:</p> <p>43.1.1 take part in any communications with representatives of the press, television, radio or other communications media on any matter concerning this Agreement; and/or</p> <p>43.1.2 use or make use of the Department’s name, logo or other branding without the prior written approval of the Department.</p>	43 Public Relations and Publicity
Clause 45.1	<p>Clause 45.1 has been amended</p> <p>45.1 No term or provision of this Agreement will be considered as waived by any Party to this Agreement unless a waiver is given in writing by that Party. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party</p>	45 Waiver

Section	Change	Clause Reference
	<p style="text-align: center;">in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.</p>	
<p>Subject matter of the Processing</p>	<p>Details have been amended</p> <p>The subject matter is the Personal Data of Learners on education or training programmes administered by the Department that are subject to this Agreement as defined in the Department Personal Information Charter, the privacy notice for Key Stage 5 and adult education and the ILR privacy notice and documentation.</p> <p>Personal information charter - Department for Education - GOV.UK (www.gov.uk)</p> <p>Privacy notice for Key Stage 5 and adult education - GOV.UK (www.gov.uk)</p> <p>ILR Privacy Notice 2023 to 2024 version 1 May 2023 (submit-learner-data.service.gov.uk)</p>	<p>Schedule 6: UK GDPR and Data Protection</p>
<p>Retention and destruction of the data once the processing is complete UNLESS requirement by UK Law to preserve that type of data</p>	<p>Description has been renamed</p> <p>“Plan for return and destruction of the data once the processing is complete UNLESS requirement under Union or Member State law to preserve that type of data”</p>	<p>Schedule 6: UK GDPR and Data Protection</p>
<p>Paragraph 1.2</p>	<p>Paragraph 1.2 has been amended</p> <p>1.2 The Provider must select its Sub-Contractors fairly and without discrimination and must comply with any procurement rules that apply when doing so, including the Public Contracts Regulations 2015 (as</p>	<p>Schedule 9: Sub-Contracting</p>

Section	Change	Clause Reference
	<p>may be amended from time to time) where the Provider is a contracting authority under those regulations.</p>	
<p>Various paragraphs</p>	<p>Paragraphs 1.4, 1.8.1, 1.12, 1.20, 1.21, 1.27 and 1.28 of Schedule 9: Sub-Contracting have been amended to include references to the relevant headings in the Sub-Contracting Funding Rules</p> <p>Paragraphs 1.27 and 1.28 have also been renumbered as Paragraphs 1.25 and 1.26.</p>	<p>Schedule 9: Sub-Contracting</p>
<p>Paragraphs 1.22 and 1.23</p>	<p>Paragraphs 1.22 and 1.23 have been deleted</p>	<p>Schedule 9: Sub-Contracting</p>
<p>Paragraph 1.24</p>	<p>Paragraph 1.24 has been amended and renumbered as Paragraph 1.22</p> <p>1.22 The Provider must continuously review the size of its sub-contracted Services and ensure this does not exceed the Sub-Contracting Threshold of 25%.</p>	<p>Schedule 9: Sub-Contracting</p>
<p>Paragraph 1.25 and 1.26</p>	<p>Paragraphs 1.25 and 1.26 have been deleted and replaced with the new Paragraphs 1.23 and 1.24</p> <p>1.23 The Provider must promptly submit an Exemption Case (as defined in the Sub-Contracting Funding Rules) if it anticipates that its Sub-Contracting will exceed the Sub-Contracting Threshold. The Provider must submit such Exemption Case no less than twelve (12) weeks prior to exceeding the Sub-Contracting Threshold. The Department may consider Exemption Cases that are submitted later if the Provider provides evidence of exceptional circumstances. The Department reserves the right to decline the Provider's Exemption Case.</p>	<p>Schedule 9: Sub-Contracting</p>

Section	Change	Clause Reference
	<p>1.24 If the Provider has previously submitted an Exemption Case, it should continue to seek permission to exceed the Sub-Contracting Threshold and must submit an Exemption Case to the Department by no later than 11.59pm on 31 March in each Funding Year. The Department may consider Exemption Cases that are submitted later if the Provider provides evidence of exceptional circumstances. The Department reserves the right to decline the Provider's Exemption Case.</p>	
<p>Paragraph 1.31</p>	<p>Paragraph 1.31 has been amended and renumbered as Paragraph 1.29</p> <p>1.29 If the aggregate total of all Sub-Contractors delivering ESFA funded provision on the Provider's behalf exceeds or is anticipated to exceed £100,000 in any academic year, the Provider must meet the requirements detailed in ESFA subcontracting standard - GOV.UK (www.gov.uk). The £100,000 threshold includes Apprenticeships, ESFA-Funded Adult Education Budget and 16 to 19 provision sub-contracted by the Provider.</p>	<p>Schedule 9: Sub-Contracting</p>

Contract for Services

Section	Change	Clause Reference
Entire Contract	All references to “Accountability Framework” have been replaced with “Apprenticeship Accountability Framework”	Entire Contract
Entire Contract	All references to “Her Majesty” have been deleted and replaced with “His Majesty” throughout the Contract	Entire Contract
Entire Contract	All references to “Register of Apprenticeship Training Providers” including the definition in Clause 1 have been amended to “Apprenticeship Provider Assessment Register” throughout the Contract.	Entire Contract
“Department”	Definition has been amended means the Secretary of State for Education acting through the Department for Education and / or Education and Skills Funding Agency (ESFA) as appropriate;	1 Definitions
“Earnings Adjustment Statement”	Definition has been amended means Earnings adjustment statement (EAS) - GOV.UK (www.gov.uk) as updated and amended from time to time;	1 Definitions
“EIR”	Definition has been added means the Environmental Information Regulations 2004;	1 Definitions
“Exemption Case”	Definition has been amended means the case submitted by the Contractor to the Department in accordance with “Subcontracting threshold and exemption cases” of the Sub-	1 Definitions

Section	Change	Clause Reference
	Contracting Funding Rules for permission to exceed the Sub-Contracting Threshold;	
“Funding Higher Risk Organisations Policy”	Definition has been added means the policy described in Schedule 9: Sub-Contracting and available at Funding higher risk organisations and subcontractors policy - GOV.UK (www.gov.uk)	1 Definitions
“Funding Period”	Definition has been added means the period set out on page 1 of this Contract.	1 Definitions
“Sub-Contract”	Definition has been amended means an agreement entered into between the Contractor and a Sub-Contractor for the purposes of engaging the Sub-Contractor to deliver part of the Services on behalf of the Contractor;	1 Definitions
“Sub-Contracting”	Definition has been added means any delivery to a Learner’s programme of learning by a separate legal entity, irrespective of whether such learning is provided by a third party recruited to deliver on site (travel to teach), online learning or whether it is described as a service.	1 Definitions
“Sub-Contractor”	Definition has been amended means a separate legal entity or an individual (not an employee) that has an agreement (called a Sub-Contract) with the Contractor to deliver any element of the Services the Department funds. A separate legal entity includes but is not limited to companies in the Contractor’s group, other associated companies and sole traders. An individual could include a person who is a sole trader, self-employed, a freelancer or someone who is employed by an agency, unless those individuals are working under the Contractor’s direct management and control in	1 Definitions

Section	Change	Clause Reference
	the same way as the Contractor's own employees. This does not include relationships between the Contractor and other third parties providing services such as marketing;	
Clause 3.5	Clause 3.5 has been added 3.5 The Contractor will comply in all respects with all relevant Laws to which it may be subject.	3 Service Delivery
Clause 7.2.3	Clause 7.2.3 has been amended 7.2.3 Without prejudice to the Department's rights under Clauses 39 (Withholding, Suspension and Repayment of Funding) and 40.2 (Termination) and to any other express rights under this Contract, where the Contractor has been found to be fraudulent or have recklessly submitted erroneous reports, claims and/or learner data, or the Department reasonably believes such reports to be fraudulent or erroneous the Department may, by notice to the Contractor, increase the level of its monitoring of the Contractor (at the Department's option) require the Contractor to increase the level of the Contractor's monitoring of its own performance of its obligations under this Contract in respect of the relevant Services which are the subject of such fraudulent, erroneous or misleading reporting until such time as the Contractor must have demonstrated to the reasonable satisfaction of the Department that it will perform (and is capable of performing) its obligations under this Contract and , in which case, the following provisions will apply:	7 Performance Monitoring
Clause 7.2.3(d)	Clause 7.2.3(d) has been amended to remove the words "save where there is no evidence that the Contractor has been found to have been fraudulent or to	7 Performance Monitoring

Section	Change	Clause Reference
	<p>have submitted erroneous reports and the Contractor has been exonerated”, as follows:</p> <p>(d) the Contractor will bear its own costs and indemnify and keep the Department indemnified at all times from and against all costs and expenses reasonably and properly incurred by or on behalf of the Department in relation to such increased level of monitoring.</p>	
Clause 11.7	<p>Clause 11.7 has been amended</p> <p>11.7 The Contractor must take all reasonable steps to meet the relevant requirements for data gathering for the Learner and employer satisfaction data in line with the Department’s requirements that are in place at the relevant time. Contractors should note that the Department is currently considering the most useful information to collect from Learners. Information will be updated when it becomes available at Learner and employer satisfaction surveys - GOV.UK (www.gov.uk) and in any subsequent updates to these web pages.</p>	11 Quality Assurance and Raising Standards
Clause 12.4	<p>Clause 12.4 has been amended</p> <p>12.4 Where the outcome of a financial assessment illustrates a deterioration from the previous assessment the Department may in its absolute discretion (and without prejudice to its rights under Clause 12.1) request such further assurance or information from the Contractor as it deems necessary.</p>	12 Financial Health
Clause 12.6	<p>Clause 12.6 has been amended</p> <p>12.6 The Department may require the Contractor to procure an independent business review of the Contractor’s financial health at the Contractor’s cost (or the Department may procure such a review and</p>	12 Financial Health

Section	Change	Clause Reference
	recharge the costs to the Contractor, at its sole discretion) if the Department has concerns over the financial health of the Contractor.	
Clause 13.7	<p>Clause 13.7 has been amended</p> <p>13.7 The Department will take action based on the Inspectorate’s published outcomes as in Clause 13.5 above. Where the Department is made aware that the Contractor has made a complaint about the graded outcome of the overall assessment by Ofsted, the Department will continue to progress action under Clauses 13.4 to 13.5 but will be mindful of the implications arising from the outcome of a complaint. The Department will review any decisions made at such time as outcomes of any complaint are made known.</p>	13 Inspections
Clause 15.4	<p>Clause 15.4 has been amended and split out into 3 new Sub-Clauses</p> <p>15.4 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to:</p> <p>15.4.1 the delivery of this Contract; or</p> <p>15.4.2 the delivery of any other contract between the Department and the Contractor; or</p> <p>15.4.3 the payments made under this Contract or any other contract between the Department and the Contractor;</p> <p>the Department will have the right to suspend payments and/or require the Contractor to suspend recruitment of Learners under this Contract and any other contract between the Parties.</p>	15 Fraud and Irregularity
Clause 16.3.1	Clause 16.3.1 has been amended	16 Relationships

Section	Change	Clause Reference
	<p>16.3.1 The Contractor must and will ensure that its Sub-Contractors will at all times during the Contract Period and for a period of six (6) years thereafter, or such other time period as stated in Schedule 1 (Specification & Monitoring), at it's own cost, fully co-operate with any enquiry, investigation or inspection (whether routine or specific) which in any way concerns, affects or relates to the Services, or any sum claimed or charged in relation to this Contract or to any other contract of the Department. Such enquiry, investigation or inspection may be by, inter alia:-</p>	
<p>Clause 18.4</p>	<p>Clause 18.4 has been added</p> <p>18.4 For the avoidance of doubt, the Department shall not be obliged to follow the Dispute Resolution Procedure in circumstances where it wishes to terminate this Contract in any circumstances described in Clause 40 (Termination).</p>	<p>18 Dispute Resolution</p>
<p>Clause 22.4.4</p>	<p>Clause 22.4.4 has been amended to add a new Sub-Clause 22.4.4(a). The existing Sub-Clause 22.4.4(a) has also been amended and renumbered as 22.4.4(b)</p> <p>22.4.4 not make a Restricted Transfer unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:</p> <ul style="list-style-type: none"> (h) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018; (i) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with 	<p>22 Data Protection and Protection of Personal Data</p>

Section	Change	Clause Reference
	<p>UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Data Controller;</p> <ul style="list-style-type: none"> (j) the Data Subject has enforceable rights and effective legal remedies; (k) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and (l) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data; 	
Clause 22.5.1	<p>Clause 22.5.1 has been amended</p> <p>22.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to processing their data under this Contract only (submission of learner data);</p>	22 Data Protection and Protection of Personal Data
Clause 22.7.2	<p>Clause 22.7.2 has been amended</p> <p>22.7.2 such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;</p>	22 Data Protection and Protection of Personal Data
Clause 22.8.2	<p>Clause 22.8.2 has been amended</p> <p>22.8.2 the Data Controller determines the processing includes special categories of data as referred to in the Article 9(1) of the UK GDPR or</p>	22 Data Protection and Protection of Personal Data

Section	Change	Clause Reference
	Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR ; or	
Clause 25	Clause 25 has been amended to include references to “the EIR” throughout	25 Freedom of Information and Confidentiality
Clause 25.2.3(a)	Clause 25.2.3(a) has been amended (a) which is or becomes public knowledge (other than by breach of Clauses 25.2.1 and 25.2.2 or any other duty of confidentiality);	25 Freedom of Information and Confidentiality
Clause 26.4.1	Clause 26.4.1 has been amended 26.4.1 they are questioned as to whether they have any Convictions or ASBOs or any other punishment for antisocial behaviour order (such as a civil injunction, community protection notice or criminal behaviour order) ;	26 Employees
Clause 26.10	Clause 26.10 has been amended 26.10 Failure by the Contractor to comply with Clauses 26.4 to 26.9 will constitute a material breach of contract.	26 Employees
Clause 26.16	Clause 26.16 has been amended 26.16 The Contractor must inform the Department if directors, or any other person who has powers of representation, decision or control, meet the characteristics set out in the Funding Higher-Risk Organisations and Sub-Contractors document. Department for Education policy on funding higher risk organisations and subcontractors - GOV.UK (www.gov.uk) . Failure to inform the Department will be a material breach of contract.	26 Employees

Section	Change	Clause Reference
Clause 26.18	<p>Clause 26.18 has been amended</p> <p>26.18 The Contractor must ensure that it and any Sub-Contractors have in place and maintain personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor must ensure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form. The Contractor must provide copies of such policies to the Department, on the Department's request.</p>	26 Employees
Clause 30.1.7	<p>Clause 30.1.7 has been amended</p> <p>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 procure an independent 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.</p>	30 Payment, Funding and Audit
Clause 32.2.1	<p>Clause 32.2.1 has been amended</p> <p>32.2.1 The Department (in accordance with Post-16 audit code of practice - GOV.UK (www.gov.uk)), the European Commission, the European Court of Auditors and/or a Crown Body may at any time conduct</p>	32 Contractor's Records and Audits

Section	Change	Clause Reference
	(whether itself or by its agents, consultants or advisers) audits for the following purposes:-	
Clause 32.5.3	<p>Clause 32.5.3 has been amended</p> <p>32.5.3 Where the Department appoints an independent third party to undertake, exercise or carry out any of the rights or powers contained in this Clause 32 (Contractor's Records and Audit), the Department must ensure that, simultaneously with its appointment, such independent third party enters into a confidentiality agreement with the Department that requires the independent third party to comply with confidentiality provisions equivalent to those set out in Contract.</p>	32 Contractor's Records and Audits
Clause 33.1	<p>Clause 33.1 has been amended</p> <p>33.1 The Contractor should obtain its own advice as to whether 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 Complying with the UK's international obligations on subsidy control: guidance for public authorities - GOV.UK (www.gov.uk).</p>	33 Subsidy Control
Clause 33.2	<p>Clause 33.2 has been amended and Sub-Clauses 33.2.1 and 33.2.2 have been added</p> <p>33.2 Where the rules on Subsidy Control apply, the Contractor must:</p> <p>33.2.1 comply with the relevant notification requirements; and</p> <p>33.2.2 collect and retain appropriate records and will supply those records to the Department on its request.</p>	33 Subsidy Control
Clause 33.5	Clause 33.5 has been deleted and replaced with the following:	33 Subsidy Control

Section	Change	Clause Reference
	<p>33.5 If a recovery order or any other enforcement measure is taken under the Subsidy Control Act 2022, the Contractor will repay the relevant subsidy to the Department within 28 days or such other timescale that the Department agrees with the Contractor.</p>	
Clause 35.1.1(g)	<p>Clause 35.1.1(g) has been amended</p> <p>(g) In all other respects, any negligent act, default or breach of statutory duty in connection with the performance or non-performance by the Contractor of its obligations under this Contract or of any Contractor Personnel in the performance or non-performance of the Services.</p>	35 Indemnities and Liability
Clause 35.9.1	<p>Clause 35.9.1 has been amended</p> <p>35.9.1 Subject to Clauses 35.2 (Contractor Not Responsible), Clause 35.8 (No Limit on Liability) and Clause 35.12 (Indirect Loss), 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 and 35.11.2	<p>Clause 35.11.1 has been amended and Clause 35.11.2 has been added</p> <p>35.11.1 Subject to Clause 35.8 (No Limit on Liability) and Clause 35.12 (Indirect Loss), the liability of the Department for the Contract Period will be one million pounds (£1,000,000) 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> <p>35.11.2 For the avoidance of doubt, Clause 35.11.1 does not affect:</p>	35 Indemnities and Liability

Section	Change	Clause Reference
	<p>(a) the Department's obligation to pay the Funding as and when it falls due in accordance with this Contract; and</p> <p>(b) any pension liability which becomes payable by the Department in accordance with the Annex to Part B of Schedule 5 (TUPE) and is claimed</p>	
Clause 37.7	<p>Clause 37.7 has been amended</p> <p>37.7 If the Change in Control or change in name breaches this Contract or any policies and criteria referred to in this Contract, without prejudice to its other rights under this Contract or otherwise, the Department reserves the right to take action against the Contractor in accordance with Part 8 of this Contract (Termination and Exit Management).</p>	37 Change in Control
Clause 38.4	<p>Clause 38.4 has been amended to remove the words "without the Department's permission" as follows:</p> <p>38.4 The Contractor will not hold itself out as acting on behalf of the Department.</p>	38 Prohibited Acts
Clause 39.1.10	<p>Clause 39.1.10 has been added</p> <p>39.1.10 The Department is entitled to withhold or suspend payment of Funding under any other provisions in this Contract.</p>	39 Withholding, Suspension and Repayment of Funding
Clause 39.2	<p>Clause 39.2 has been added</p> <p>39.2 Without prejudice to or limiting the provisions of Clause 39.1.1, where more than one breach (which are not material breaches) have occurred, those breaches (taken together) may be regarded as a material breach.</p>	39 Withholding, Suspension and Repayment of Funding

Section	Change	Clause Reference
Clause 39.2	<p>Clause 39.2 has been amended and renumbered as Clause 39.3</p> <p>39.3 Rights to withhold, suspend and/or require repayment of the Funding are set out in other provisions in this Contract and in the Funding Rules (as amended from time to time)</p>	39 Withholding, Suspension and Repayment of Funding
Clauses 40 and 41	<p>There have been several amendments to Clause 40 (Termination) and Clause 41 (Consequences of Termination and Expiry). These clauses have been reordered, some duplication has been removed and Clause 41 has been updated to add clauses that have been deleted from Clause 40. Please refer to the revised clauses within your Contract which incorporate all amendments.</p>	40 Termination 41 Consequences of Termination and Expiry
Clause 44.1	<p>Clause 44.1 has been amended and Sub-clauses 44.1.1, 44.1.2 and 44.1.3 have been added</p> <p>44.1 Any notice or other document to be given under this Contract must be in writing and personally delivered, emailed, sent through the Department's electronic portal or sent by first class post to the address of the relevant party, as referred to above or in the case of an email address or correspondence address, as notified by the relevant party in writing from time to time. The notice or communication will be considered delivered as follows:</p> <p>44.1.1 If personally delivered, when handed over to the addressee;</p> <p>44.1.2 if sent by email or through the Department's electronic portal, on the day the email is sent if sent on a Working Day and before 5.00 pm, otherwise the email will be deemed delivered at 9.00 am on the next Working Day;</p> <p>if sent by first class post, on the second Working Day after the day on which it is posted.</p>	44 Service of Notices

Section	Change	Clause Reference
Clause 44.2	<p>Clause 44.2 has been amended</p> <p>44.2 All such notices and communications must be in the English language. To prove the giving of a notice or other document it will be sufficient to show that it was despatched.</p>	44 Service of Notices
Clause 46.1	<p>Clause 46.1 has been renamed “No Partnership, Joint Venture or Employment” and Clause 46.1.1 has been amended to add the words “or joint venture”.</p> <p>46.1 No Partnership, Joint Venture or Employment</p> <p>46.1.1 Nothing in this Contract will be construed as creating a partnership or joint venture or as an contract of employment between the Department and the Contractor.</p>	46 No Agency
Clause 46.2	<p>Clause 46.2 has been renamed “No Agency or Power to Bind”</p>	46 No Agency
Clause 48.1	<p>Clause 48.1 and Sub-Clauses 48.1.1 and 48.1.2 have been amended</p> <p>48.1 The Contractor must not by itself, its employees or agents and shall procure that its Contractor Personnel must not:</p> <p>48.1.1 take part in any communications with representatives of the press, television, radio or other communications media on any matter concerning this Contract; and/or</p> <p>48.1.2 use or make use of the Department’s name, logo or other branding without the prior written approval of the Department.</p>	48 Public Relations and Publicity
Clause 50.1	<p>Clause 50.1 has been amended</p> <p>50.1 No term or provision of this Contract will be considered as waived by any Party to this Contract unless a waiver is given in writing by that Party.</p>	50 Waiver

Section	Change	Clause Reference
	<p>No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.</p>	
<p>1 Definitions</p>	<p>“Employee Liabilities” definition has been added</p>	<p>Schedule 5: TUPE</p>
<p>Paragraph 1.4</p>	<p>Paragraph 1.4 of Part D: Employment Exit Provisions of Schedule 5 has been amended</p> <p>1.4 The Contractor warrants, for the benefit of the Department, any Successor Contractor, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 will be true and accurate in all material respects at the time of providing the information and the Contractor will indemnify and keep the Department indemnified fully now and in the future in respect of all or any costs, losses, liabilities, damages and expenses whether arising in contract or under any relevant Law suffered or incurred by the Department, the Successor Contractor and/or any Replacement Sub-Contractor by reason of any proceedings, claim or demand arising from or in connection with the provision of information and/or failure to provide complete and accurate information under Paragraphs 1.1 and 1.2.</p>	<p>Schedule 5: TUPE</p>
<p>Subject matter of the Processing</p>	<p>Details have been amended</p> <p>The subject matter is the Personal Data of Learners on education or training programmes administered by the Department that are subject to this Contract as defined in the Department Personal Information Charter, the privacy notice for Key Stage 5 and adult education and the ILR privacy notice and documentation.</p>	<p>Schedule 6: UK GDPR and Data Protection</p>

Section	Change	Clause Reference
	Personal information charter - Department for Education - GOV.UK (www.gov.uk) Privacy notice for Key Stage 5 and adult education - GOV.UK (www.gov.uk) ILR Privacy Notice 2023 to 2024 version 1 May 2023 (submit-learner-data.service.gov.uk)	
Retention and destruction of the data once the processing is complete UNLESS requirement by (UK) Law to preserve that type of data	Description has been renamed “Plan for return and destruction of the data once the processing is complete UNLESS requirement under Union or Member State law to preserve that type of data”	Schedule 6: UK GDPR and Data Protection
Paragraph 1.2	Paragraph 1.2 has been amended 1.2 The Contractor must select its Sub-Contractors fairly and without discrimination and must comply with any procurement rules that apply when doing so, including the Public Contracts Regulations 2015 (as may be amended from time to time) where the Contractor is a contracting authority under those regulations.	Schedule 9: Sub-Contracting
Various paragraphs	Paragraphs 1.4, 1.8.1, 1.12, 1.20, 1.21, 1.27 and 1.28 of Schedule 9: Sub-Contracting have been amended to include references to the relevant headings in the Sub-Contracting Funding Rules Paragraphs 1.27 and 1.28 have also been renumbered as Paragraphs 1.25 and 1.26.	Schedule 9: Sub-Contracting
Paragraphs 1.22 and 1.23	Paragraphs 1.22 and 1.23 have been deleted	Schedule 9: Sub-Contracting

Section	Change	Clause Reference
Paragraph 1.24	<p>Paragraph 1.24 has been amended and renumbered as Paragraph 1.22</p> <p>1.22 The Contractor must continuously review the size of its sub-contracted Services and ensure this does not exceed the Sub-Contracting Threshold of 25%.</p>	Schedule 9: Sub-Contracting
Paragraph 1.25 and 1.26	<p>Paragraphs 1.25 and 1.26 have been deleted and replaced with the new Paragraphs 1.23 and 1.24</p> <p>1.23 The Contractor must promptly submit an Exemption Case (as defined in the Sub-Contracting Funding Rules) if it anticipates that its Sub-Contracting will exceed the Sub-Contracting Threshold. The Contractor must submit such Exemption Case no less than twelve (12) weeks prior to exceeding the Sub-Contracting Threshold. The Department may consider Exemption Cases that are submitted later if the Contractor provides evidence of exceptional circumstances. The Department reserves the right to decline the Contractor's Exemption Case.</p> <p>1.24 If the Contractor has previously submitted an Exemption Case, it should continue to seek permission to exceed the Sub-Contracting Threshold and must submit an Exemption Case to the Department by no later than 11.59pm on 31 March in each Funding Year. The Department may consider Exemption Cases that are submitted later if the Contractor provides evidence of exceptional circumstances. The Department reserves the right to decline the Contractor's Exemption Case.</p>	Schedule 9: Sub-Contracting

Paragraph 1.31	Paragraph 1.31 has been amended and renumbered as Paragraph 1.29 1.29 If the aggregate total of all Sub-Contractors delivering ESFA funded provision on the Contractor's behalf exceeds or is anticipated to exceed £100,000 in any academic year, the Contractor must meet the requirements detailed in ESFA subcontracting standard - GOV.UK (www.gov.uk) . The £100,000 threshold includes Apprenticeships, ESFA-Funded Adult Education Budget and 16 to 19 provision sub-contracted by the Contractor.	Schedule 9: Sub-Contracting
-----------------------	---	-----------------------------

Conditions of Funding (Grant) (Trusts)

Section	Change	Clause Reference
Entire Agreement	All references to “Accountability Framework” have been replaced with “Apprenticeship Accountability Framework”	Entire Agreement
Entire Agreement	All references to “Her Majesty” have been deleted and replaced with “His Majesty” throughout the Agreement	Entire Agreement
Entire Agreement	All references to “Register of Apprenticeship Training Providers” including the definition in Clause 1 have been amended to “Apprenticeship Provider Assessment Register” throughout the Agreement.	Entire Agreement
“Department”	Definition has been amended means the Secretary of State for Education acting through the Department for Education and / or Education and Skills Funding Agency (ESFA) as appropriate;	1 Definitions
“Earnings Adjustment Statement”	Definition has been amended means Earnings adjustment statement (EAS) - GOV.UK (www.gov.uk) as updated and amended from time to time;	1 Definitions
“EIR”	Definition has been added means the Environmental Information Regulations 2004;	1 Definitions
“Exemption Case”	Definition has been amended means the case submitted by the Provider to the Department in accordance with “ Subcontracting threshold and exemption cases ” of the Sub-Contracting Funding Rules for permission to exceed the Sub-Contracting Threshold;	1 Definitions

Section	Change	Clause Reference
“Funding Higher Risk Organisations Policy”	Definition has been added means the policy described in Schedule 9: Sub-Contracting and available at Funding higher risk organisations and subcontractors policy - GOV.UK (www.gov.uk)	1 Definitions
“Funding Period”	Definition has been added means the period set out on page 1 of this Agreement.	1 Definitions
“Sub-Contract”	Definition has been amended means an agreement entered into between the Provider and a Sub-Contractor for the purposes of engaging the Sub-Contractor to deliver part of the Services on behalf of the Provider;	1 Definitions
“Sub-Contracting”	Definition has been added means any delivery to a Learner’s programme of learning by a separate legal entity, irrespective of whether such learning is provided by a third party recruited to deliver on site (travel to teach), online learning or whether it is described as a service.	1 Definitions
“Sub-Contractor”	Definition has been amended means a separate legal entity or an individual (not an employee) that has an agreement (called a Sub-Contract) with the Provider to deliver any element of the Services the Department funds. A separate legal entity includes but is not limited to companies in the Provider’s group, other associated companies and sole traders. An individual could include a person who is a sole trader, self-employed, a freelancer or someone who is employed by an agency, unless those individuals are working under the Provider’s direct management and control in the same way as the Provider’s own employees. This does not include	1 Definitions

Section	Change	Clause Reference
	relationships between the Provider and other third parties providing services such as marketing.	
Clause 3.5	<p>Clause 3.5 has been added</p> <p>3.5 The Provider will comply in all respects with all relevant Laws to which it may be subject.</p>	3 Service Delivery
Clause 5.2.3	<p>Clause 5.2.3 has been amended</p> <p>5.2.3 Without prejudice to the Department’s rights under Clauses 34 (Withholding, Suspension and Repayment of Funding) and 35.2 (Termination) and to any other express rights under this Agreement, where the Provider has been found to be fraudulent or have recklessly submitted erroneous reports, claims and/or learner data, or the Department reasonably believes such reports to be fraudulent or erroneous the Department may, by notice to the Provider, increase the level of its monitoring of the Provider or (at the Department’s option) require the Provider to increase the level of the Provider's monitoring of its own performance of its obligations under this Agreement in respect of the relevant Services which are the subject of such fraudulent, erroneous or misleading reporting until such time as the Provider must have demonstrated to the reasonable satisfaction of the Department that it will perform (and is capable of performing) its obligations under this Agreement and, in which case, the following provisions will apply:</p>	5 Performance Monitoring
Clause 5.2.3(d)	<p>Clause 5.2.3(d) has been amended to remove the words “save where there is no evidence that the Provider has been found to have been fraudulent or to have submitted erroneous reports and the Provider has been exonerated” as follows:</p> <p>(d) the Provider will bear its own costs and indemnify and keep the Department indemnified at all times from and against all costs and</p>	5 Performance Monitoring

Section	Change	Clause Reference
	<p>expenses reasonably and properly incurred by or on behalf of the Department in relation to such increased level of monitoring.</p>	
<p>Clause 10.7</p>	<p>Clause 10.7 has been amended</p> <p>10.7 The Provider must take all reasonable steps to meet the relevant requirements for data gathering for the Learner and Employer satisfaction data in line with the Department’s requirements that are in place at the relevant time. Providers should note that the Department is currently considering the most useful information to collect from Learners. Information will be updated when it becomes available at Learner and employer satisfaction data: information for providers - GOV.UK (www.gov.uk) and in any subsequent updates to these web pages.</p>	<p>10 Quality Assurance and Raising Standards</p>
<p>Clause 12.7</p>	<p>Clause 12.7 has been amended</p> <p>12.7 The Department will take action based on the Inspectorate’s published outcomes as in Clause 12.5 above. Where the Department is made aware that the Provider has made a complaint about the graded outcome of the overall assessment by Ofsted, the Department will continue to progress action under Clauses 12.4 and 12.5 but will be mindful of the implications arising from the outcome of a complaint. The Department will review any decisions made at such time as outcomes of any complaint are made known.</p>	<p>12 Inspections</p>
<p>Clause 14.4</p>	<p>Clause 14.4 has been amended and split out into 3 new Sub-Clauses</p> <p>14.4 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to:</p> <p>14.4.1 the delivery of this Agreement; or</p>	<p>14 Fraud and Irregularity</p>

Section	Change	Clause Reference
	<p>14.4.2 the delivery of any other agreement between the Department and the Provider; or</p> <p>14.4.3 the payments made under this Agreement or any other agreement between the Department and the Provider, the Department will have the right to suspend payments and/or require the Provider to suspend recruitment of Learners under this Agreement and any other agreement between the Parties.</p>	
Clause 15.2.1	<p>Clause 15.2.1 has been amended</p> <p>15.2.1 The Provider must and will ensure that its Sub-Contractors will at all times during the Agreement Period and for a period of six (6) years thereafter, or such other time period as stated in Schedule 1 (Specification & Monitoring), at it's own cost, fully co-operate with any enquiry, investigation or inspection (whether routine or specific) which in any way concerns, affects or relates to the Services, or any sum claimed or charged in relation to this Agreement or to any other Agreement of the Department. Such enquiry, investigation or inspection may be by, inter alia:-</p>	15 Relationships
Clause 17.4	<p>Clause 17.4 has been added</p> <p>17.4 For the avoidance of doubt, the Department shall not be obliged to follow the Dispute Resolution Procedure in circumstances where it wishes to terminate this Agreement in any circumstances described in Clause 35 (Termination).</p>	17 Dispute Resolution
Clause 20.4.4	<p>Clause 20.4.4 has been amended to add a new Sub-Clause 20.4.4(a). The existing Sub-Clause 20.4.4(a) has also been amended and renumbered as 20.4.4(b)</p>	20 Data Protection and Protection of Personal Data

Section	Change	Clause Reference
	<p>20.4.4 not make a Restricted Transfer unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:</p> <ul style="list-style-type: none"> (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018; (b) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Data Controller; (c) the Data Subject has enforceable rights and effective legal remedies; (d) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and (e) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data; 	
<p>Clause 20.5.1</p>	<p>Clause 20.5.1 has been amended</p> <p>20.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to processing their data under this Agreement only (submission of learner data);</p>	<p>20 Data Protection and Protection of Personal Data</p>

Section	Change	Clause Reference
Clause 20.7.2	<p>Clause 20.7.2 has been amended</p> <p>20.7.2 such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;</p>	20 Data Protection and Protection of Personal Data
Clause 20.8.2	<p>Clause 20.8.2 has been amended</p> <p>20.8.2 the Data Controller determines the processing includes special categories of data as referred to in the 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 23	<p>Clause 23 has been amended to include references to “the EIR” throughout</p>	23 Freedom of Information and Confidentiality
Clause 23.2.3 (a)	<p>Clause 23.2.3 (a) has been amended</p> <p>(a) which is or becomes public knowledge (other than by breach of Clauses 23.2.1 and 23.2.2 or any other duty of confidentiality);</p>	23 Freedom of Information and Confidentiality
Clause 24.4.1	<p>Clause 24.4.1 has been amended</p> <p>24.4.1 they are questioned as to whether they have any Convictions or ASBOs or any other punishment for antisocial behaviour order (such as a civil injunction, community protection notice or criminal behaviour order);</p>	24 Employees
Clause 24.10	<p>Clause 24.10 has been amended</p>	24 Employees

Section	Change	Clause Reference
	24.10 Failure by the Provider to comply with Clauses 24.4 to 24.9 will constitute a material breach of agreement.	
Clause 24.16	<p>Clause 24.16 has been amended</p> <p>24.16 The Provider must inform the Department if directors, or any other person who has powers of representation, decision or control, meet the characteristics set out in the Funding Higher-Risk Organisations and Sub-Contractors document. Department for Education policy on funding higher risk organisations and subcontractors - GOV.UK (www.gov.uk). Failure to inform the Department will be a material breach of agreement.</p>	24 Employees
Clause 24.18	<p>Clause 24.18 has been amended</p> <p>24.18 The Provider must ensure that it and any Sub-Contractors have in place and maintain personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Provider must ensure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form. The Provider must provide copies of such policies to the Department, on the Department's request.</p>	24 Employees
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 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 procure an independent 100% audit of all or part of the Services by a deadline specified by the Department and/or to require the Provider to</p>	26 Payment, Funding and Audit

Section	Change	Clause Reference
	<p>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>Clause 28.2.1</p>	<p>Clause 28.2.1 has been amended</p> <p>28.2.1 The Department (in accordance with Post-16 audit code of practice - GOV.UK (www.gov.uk)), the European Commission, the European Court of Auditors and/or a Crown Body may at any time conduct (whether itself or by its agents, consultants or advisers) audits for the following purposes:-</p>	<p>28 Provider's Records and Audit</p>
<p>Clause 28.5.3</p>	<p>Clause 28.5.3 has been amended</p> <p>28.5.3 Where the Department appoints an independent third party to undertake, exercise or carry out any of the rights or powers contained in this Clause 28, the Department must ensure that, simultaneously with its appointment, such independent third party enters into a confidentiality agreement with the Department that requires the independent third party to comply with confidentiality provisions equivalent to those set out in this Agreement.</p>	<p>28 Provider's Records and Audit</p>
<p>Clause 29.1</p>	<p>Clause 29.1 has been amended</p> <p>29.1 The Provider should obtain its own advice as to whether 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 Complying with the UK's international obligations on subsidy control: guidance for public authorities - GOV.UK (www.gov.uk).</p>	<p>29 Subsidy Control</p>

Section	Change	Clause Reference
Clause 29.2	<p>Clause 29.2 has been amended and Sub-Clauses 29.2.1 and 29.2.2 have been added</p> <p>29.2 Where the rules on Subsidy Control apply, the Provider must:</p> <p>29.2.1 comply with the relevant notification requirements; and</p> <p>29.2.2 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 deleted and replaced with the following:</p> <p>29.5 If a recovery order or any other enforcement measure is taken under the Subsidy Control Act 2022, the Provider will repay the relevant subsidy to the Department within 28 days or such other timescale that the Department agrees with the Provider.</p>	29 Subsidy Control
Clause 31.1.1 (g)	<p>Clause 31.1.1 (g) has been amended</p> <p>(g) In all other respects, any negligent act, default or breach of statutory duty in connection with the performance or non-performance by the Provider of its obligations under this Agreement or of any Provider Personnel in the performance or non-performance of the Services.</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), Clause 31.8 (No Limit on Liability) and Clause 31.12 (Indirect Loss), 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

Section	Change	Clause Reference
Clause 31.11.1	<p>Clause 31.11.1 has been amended</p> <p>31.11.1 Subject to Clause 31.8 (No Limit on Liability) and Clause 31.12 (Indirect Loss), the liability of the Department 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.</p>	31 Indemnities and Liability
Clause 33.4	<p>Clause 33.4 has been amended to remove the words ‘without the Department’s permission’ as follows:</p> <p>33.4 The Provider will not hold itself out as acting on behalf of the Department.</p>	33 Prohibited Acts
Clause 34.1.10	<p>Clause 34.1.10 has been added</p> <p>34.1.10 The Department is entitled to withhold or suspend payment of Funding under any other provisions in this Agreement.</p>	34 Withholding, Suspension and Repayment of Funding
Clause 34.2	<p>Clause 34.2 has been added</p> <p>34.2 Without prejudice to or limiting the provisions of Clause 34.1.1, where more than one breach (which are not material breaches) have occurred, those breaches (taken together) may be regarded as a material breach.</p>	34 Withholding, Suspension and Repayment of Funding
Clause 34.2	<p>Clause 34.2 has been amended and renumbered as 34.3</p> <p>34.3 Rights to withhold, suspend and/or require repayment of the Funding are set out in other provisions in this Agreement and in the Funding Rules (as amended from time to time).</p>	34 Withholding, Suspension and Repayment of Funding
Clause 35 and 36	<p>There have been several amendments to Clause 35 (Termination) and Clause 36 (Consequences of Termination and Expiry). These clauses have been reordered, some duplication has been removed and Clause 36 has been updated to add clauses that have been deleted from Clause 35. Please refer</p>	Clause 35 Termination and Clause 36 Consequences of

Section	Change	Clause Reference
	to the revised clauses within your Agreement which incorporate all amendments.	Termination and Expiry
Clause 39.1	<p>Clause 39.1 has been amended and Sub-Clauses 39.1.1, 39.1.2 and 39.1.3 have been added</p> <p>39.1 Any notice or other document to be given under this Agreement must be in writing and personally delivered, e-mailed, sent through the Department's electronic portal or sent by first class post to the address of the relevant party, as referred to above or in the case of an email address or correspondence address, as notified by the relevant party in writing from time to time. The notice or communication will be considered delivered as follows:</p> <p>39.1.1 if personally delivered, when handed over to the addressee;</p> <p>39.1.2 if sent by email or through the Department's electronic portal, on the day the email is sent if sent on a Working Day and before 5.00 pm, otherwise the email will be deemed delivered at 9.00 am on the next Working Day;</p> <p>39.1.3 if sent by first class post, on the second Working Day after the day on which it is posted.</p>	39 Service of Notices
Clause 39.2	<p>Clause 39.2 has been amended</p> <p>39.2 All such notices and communications must be in the English language. To prove the giving of a notice or other document it will be sufficient to show that it was despatched.</p>	39 Service of Notices

Section	Change	Clause Reference
<p>Clause 41.1</p>	<p>Clause 41.1 has been renamed “No Partnership, Joint Venture or Employment” and Clause 41.1.1 has been amended to add the words “or joint venture”</p> <p>41.1 No Partnership, Joint Venture or Employment</p> <p>41.1.1 Nothing in this Agreement will be construed as creating a partnership or joint venture or as an Agreement of employment between the Department and the Provider.</p>	<p>41 No Agency</p>
<p>Clause 41.2</p>	<p>Clause 41.2 has been renamed “No Agency or Power to Bind”</p>	<p>41 No Agency</p>
<p>Clause 43.1</p>	<p>Clause 43.1 and Sub-Clauses 43.1.1 and 43.1.2 have been amended</p> <p>43.1 The Provider must not by itself, its employees or agents and shall procure that its Provider Personnel must not:</p> <p>43.1.1 take part in any communications with representatives of the press, television, radio or other communications media on any matter concerning this Agreement; and/or</p> <p>43.1.2 use or make use of the Department’s name, logo or other branding without the prior written approval of the Department.</p>	<p>43 Public Relations and Publicity</p>
<p>Clause 45.1</p>	<p>Clause 45.1 has been amended</p> <p>45.1 No term or provision of this Agreement will be considered as waived by any Party to this Agreement unless a waiver is given in writing by that Party. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.</p>	<p>45 Waiver</p>

Section	Change	Clause Reference
Subject matter of the Processing	<p>Details have been amended</p> <p>The subject matter is the Personal Data of Learners on education or training programmes administered by the Department that are subject to this Agreement as defined in the Department Personal Information Charter, the privacy notice for Key Stage 5 and adult education and the ILR privacy notice and documentation.</p> <p>Personal information charter - Department for Education - GOV.UK (www.gov.uk)</p> <p>Privacy notice for Key Stage 5 and adult education - GOV.UK (www.gov.uk)</p> <p>ILR Privacy Notice 2023 to 2024 version 1 May 2023 (submit-learner-data.service.gov.uk)</p>	<p>Schedule 6: UK GDPR and Data Protection</p>
Retention and destruction of the data once the processing is complete UNLESS requirement by UK Law to preserve that type of data	<p>Description has been renamed</p> <p>“Plan for return and destruction of the data once the processing is complete UNLESS requirement under Union or Member State law to preserve that type of data”</p>	<p>Schedule 6: UK GDPR and Data Protection</p>
Paragraph 1.2	<p>Paragraph 1.2 has been amended</p> <p>1.2 The Provider must select its Sub-Contractors fairly and without discrimination and must comply with any procurement rules that apply when doing so, including the Public Contracts Regulations 2015 (as may be amended from time to time) where the Provider is a contracting authority under those regulations.</p>	<p>Schedule 9: Sub-Contracting</p>

Section	Change	Clause Reference
Various paragraphs	<p>Paragraphs 1.4, 1.8.1, 1.12, 1.20, 1.21, 1.27 and 1.28 of Schedule 9: Sub-Contracting have been amended to include references to the relevant headings in the Sub-Contracting Funding Rules</p> <p>Paragraphs 1.27 and 1.28 have also been renumbered as Paragraphs 1.25 and 1.26.</p>	Schedule 9: Sub-Contracting
Paragraphs 1.22 and 1.23	Paragraphs 1.22 and 1.23 have been deleted	Schedule 9: Sub-Contracting
Paragraph 1.24	<p>Paragraph 1.24 has been amended and renumbered as Paragraph 1.22</p> <p>1.22 The Provider must continuously review the size of its sub-contracted Services and ensure this does not exceed the Sub-Contracting Threshold of 25%.</p>	Schedule 9: Sub-Contracting
Paragraph 1.25 and 1.26	<p>Paragraphs 1.25 and 1.26 have been deleted and replaced with the new Paragraphs 1.23 and 1.24</p> <p>1.23 The Provider must promptly submit an Exemption Case (as defined in the Sub-Contracting Funding Rules) if it anticipates that its Sub-Contracting will exceed the Sub-Contracting Threshold. The Provider must submit such Exemption Case no less than twelve (12) weeks prior to exceeding the Sub-Contracting Threshold. The Department may consider Exemption Cases that are submitted later if the Provider provides evidence of exceptional circumstances. The Department reserves the right to decline the Provider's Exemption Case.</p> <p>1.24 If the Provider has previously submitted an Exemption Case, it should continue to seek permission to exceed the Sub-Contracting Threshold and must submit an Exemption Case to the Department by no later than</p>	Schedule 9: Sub-Contracting

Section	Change	Clause Reference
	<p>11.59pm on 31 March in each Funding Year. The Department may consider Exemption Cases that are submitted later if the Provider provides evidence of exceptional circumstances. The Department reserves the right to decline the Provider's Exemption Case.</p>	
<p>Paragraph 1.31</p>	<p>Paragraph 1.31 has been amended and re-numbered as Paragraph 1.29</p> <p>1.29 If the aggregate total of all Sub-Contractors delivering ESFA funded provision on the Provider's behalf exceeds or is anticipated to exceed £100,000 in any academic year, the Provider must meet the requirements detailed in ESFA subcontracting standard - GOV.UK (www.gov.uk). The £100,000 threshold includes Apprenticeships, ESFA-Funded Adult Education Budget and 16 to 19 provision sub-contracted by the Provider.</p>	<p>Schedule 9: Sub-Contracting</p>

Specialist Post-16 Institution

Section	Change	Clause Reference
Entire Agreement	All references to “Her Majesty” have been deleted and replaced with “His Majesty” throughout the Agreement	Entire Agreement
“Department”	Definition has been amended means the Secretary of State for Education acting through the Department for Education and / or Education and Skills Funding Agency (ESFA) as appropriate;	1 Definitions
“Earnings Adjustment Statement”	Definition has been amended means Earnings adjustment statement (EAS) - GOV.UK (www.gov.uk) as updated and amended from time to time;	1 Definitions
“EIR”	Definition has been added means the Environmental Information Regulations 2004;	1 Definitions
“Exemption Case”	Definition has been amended means the case submitted by the Provider to the Department in accordance with “Subcontracting threshold and exemption cases” of the Sub-Contracting Funding Rules for permission to exceed the Sub-Contracting Threshold;	1 Definitions
“Funding Higher Risk Organisations Policy”	Definition has been added means the policy described in Schedule 9: Sub-Contracting and available at Funding higher risk organisations and subcontractors policy - GOV.UK (www.gov.uk)	1 Definitions
“Funding Period”	Definition has been added	1 Definitions

Section	Change	Clause Reference
	means the period set out on page 1 of this Agreement.	
“Sub-Contract”	Definition has been amended means an agreement entered into between the Provider and a Sub-Contractor for the purposes of engaging the Sub-Contractor to deliver part of the Services on behalf of the Provider;	1 Definitions
“Sub-Contracting”	Definition has been added means any delivery to a Learner’s programme of learning by a separate legal entity, irrespective of whether such learning is provided by a third party recruited to deliver on site (travel to teach), online learning or whether it is described as a service.	1 Definitions
“Sub-Contractor”	Definition has been amended means a separate legal entity or an individual (not an employee) that has an agreement (called a Sub-Contract) with the Provider to deliver any element of the Services the Department funds. A separate legal entity includes but is not limited to companies in the Provider’s group, other associated companies and sole traders. An individual could include a person who is a sole trader, self-employed, a freelancer or someone who is employed by an agency, unless those individuals are working under the Provider’s direct management and control in the same way as the Provider’s own employees. This does not include relationships between the Provider and other third parties providing services such as marketing;	1 Definitions
Clause 3.5	Clause 3.5 has been added 3.5 The Provider will comply in all respects with all relevant Laws to which it may be subject.	3 Service Delivery

Section	Change	Clause Reference
Clause 5.2.3	<p>Clause 5.2.3 has been amended</p> <p>5.2.3 Without prejudice to the Department’s rights under Clauses 35 (Withholding, Suspension and Repayment of Funding) and 36.2 (Termination) and to any other express rights under this Agreement, where the Provider has been found to be fraudulent or have recklessly submitted erroneous reports, claims and/or learner data, or the Department reasonably believes such reports to be fraudulent or erroneous the Department may, by notice to the Provider, increase the level of its monitoring of the Provider or (at the Department’s option) require the Provider to increase the level of the Provider’s monitoring of its own performance of its obligations under this Agreement in respect of the relevant Services which are the subject of such fraudulent, erroneous or misleading reporting until such time as the Provider must have demonstrated to the reasonable satisfaction of the Department that it will perform (and is capable of performing) its obligations under this Agreement and, in which case, the following provisions will apply:</p>	5 Performance Monitoring
Clause 5.2.3(d)	<p>Clause 5.2.3(d) has been amended to remove the words “save where there is no evidence that the Provider has been found to have been fraudulent or to have submitted erroneous reports and the Provider has been exonerated” as follows:</p> <p>(d) the Provider will bear its own costs and indemnify and keep the Department indemnified at all times from and against all costs and expenses reasonably and properly incurred by or on behalf of the Department in relation to such increased level of monitoring.</p>	5 Performance Monitoring
Clause 11.6	<p>Clause 11.6 has been amended</p> <p>11.6 The Department may require the Provider to procure an independent business review of the Provider’s financial health at the Provider’s cost (or the Department may procure such a review and recharge the</p>	11 Financial Health

Section	Change	Clause Reference
	<p>costs to the Provider, at its sole discretion) if the Department has concerns over the financial health of the Provider.</p>	
<p>Clause 12.7</p>	<p>Clause 12.7 has been amended</p> <p>12.7 The Department will take action based on the Inspectorate’s published outcomes as in Clause Error! Reference source not found. above. Where the Department is made aware that the Provider has made a complaint about the graded outcome of the overall assessment by Ofsted, the Department will continue to progress action under Clauses Error! Reference source not found. to Error! Reference source not found. but will be mindful of the implications arising from the outcome of a complaint. The Department will review any decisions made at such time as outcomes of any complaint are made known.</p>	<p>12 Inspections</p>
<p>Clause 14.4</p>	<p>Clause 14.4 has been amended and split out into 3 new Sub-Clauses</p> <p>14.4 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to:</p> <p>14.4.1 the delivery of this Agreement; or</p> <p>14.4.2 the delivery of any other agreement between the Department and the Provider; or</p> <p>14.4.3 the payments made under this Agreement or any other agreement between the Department and the Provider, the Department will have the right to suspend payments and/or require the Provider to suspend recruitment of Learners under this Agreement and any other agreement between the Parties.</p>	<p>14 Fraud and Irregularity</p>
<p>Clause 15.2.1</p>	<p>Clause 15.2.1 has been amended</p>	<p>15 Relationships</p>

Section	Change	Clause Reference
	<p>15.2.1 The Provider must and will ensure that its Sub-Contractors will at all times during the Agreement Period and for a period of six (6) years thereafter, or such other time period as stated in Schedule 1 (Specification & Monitoring), at it's own cost, fully co-operate with any enquiry, investigation or inspection (whether routine or specific) which in any way concerns, affects or relates to the Services, or any sum claimed or charged in relation to this Agreement or to any other Agreement of the Department. Such enquiry, investigation or inspection may be by, inter alia:-</p>	
<p>Clause 17.4</p>	<p>Clause 17.4 has been added</p> <p>17.4 For the avoidance of doubt, the Department shall not be obliged to follow the Dispute Resolution Procedure in circumstances where it wishes to terminate this Agreement in any circumstances described in Clause 36 (Termination).</p>	<p>17 Dispute Resolution</p>
<p>Clause 20.4.4</p>	<p>Clause 20.4.4 has been amended to add a new Sub-Clause 20.4.4(a). The existing Sub-Clause 20.4.4(a) has also been amended and renumbered as 20.4.4(b)</p> <p>20.4.4 not make a Restricted Transfer unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:</p> <ul style="list-style-type: none"> (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018; (b) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with 	<p>20 Data Protection and Protection of Personal Data</p>

Section	Change	Clause Reference
	<p>UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Data Controller;</p> <ul style="list-style-type: none"> (c) the Data Subject has enforceable rights and effective legal remedies; (d) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and (e) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data; 	
Clause 20.5.1	<p>Clause 20.5.1 has been amended</p> <p>20.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to processing their data under this Agreement only (submission of learner data);</p>	20 Data Protection and Protection of Personal Data
Clause 20.7.2	<p>Clause 20.7.2 has been amended</p> <p>20.7.2 such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;</p>	20 Data Protection and Protection of Personal Data
Clause 20.8.2	<p>Clause 20.8.2 has been amended</p> <p>20.8.2 the Data Controller determines the processing includes special categories of data as referred to in the Article 9(1) of the UK GDPR or</p>	20 Data Protection and Protection of Personal Data

Section	Change	Clause Reference
	Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR ; or	
Clause 23	Clause 23 has been amended to include references to “the EIR” throughout	23 Freedom of Information and Confidentiality
Clause 23.2.3 (a)	Clause 23.2.3 (a) has been amended (a) which is or becomes public knowledge (other than by breach of Clauses 23.2.1 and 23.2.2 or any other duty of confidentiality);	23 Freedom of Information and Confidentiality
Clause 24.4.1	Clause 24.4.1 has been amended 24.4.1 they are questioned as to whether they have any Convictions or ASBOs or any other punishment for antisocial behaviour order (such as a civil injunction, community protection notice or criminal behaviour order) ;	24 Employees
Clause 24.10	Clause 24.10 has been amended 24.10 Failure by the Provider to comply with Clauses 24.4 to 24.9 will constitute a material breach of agreement.	24 Employees
Clause 24.16	Clause 24.16 has been amended 24.16 The Provider must inform the Department if directors, or any other person who has powers of representation, decision or control, meet the characteristics set out in the Funding Higher-Risk Organisations and Sub-Contractors document. Department for Education policy on funding higher risk organisations and subcontractors - GOV.UK (www.gov.uk) . Failure to inform the Department will be a material breach of agreement.	24 Employees

Section	Change	Clause Reference
Clause 24.18	<p>Clause 24.18 has been amended</p> <p>24.18 The Provider must ensure that it and any Sub-Contractors have in place and maintain personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Provider must ensure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form. The Provider must provide copies of such policies to the Department, on the Department's request.</p>	24 Employees
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 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 procure an independent 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>	26 Payment, Funding and Audit
Clause 28.2.1	<p>Clause 28.2.1 has been amended</p> <p>28.2.1 The Department (in accordance with Post-16 audit code of practice - GOV.UK (www.gov.uk)), the European Commission, the European Court of Auditors and/or a Crown Body may at any time conduct (whether</p>	28 Provider's Records and Audit

Section	Change	Clause Reference
	<p>itself or by its agents, consultants or advisers) audits for the following purposes:-</p>	
<p>Clause 28.5.3</p>	<p>Clause 28.5.3 has been amended</p> <p>28.5.3 Where the Department appoints an independent third party to undertake, exercise or carry out any of the rights or powers contained in this Clause 28 (Provider's Records and Audit), the Department must ensure that, simultaneously with its appointment, such independent third party enters into a confidentiality agreement with the Department that requires the independent third party to comply with confidentiality provisions equivalent to those set out in this Agreement.</p>	<p>28 Provider's Records and Audit</p>
<p>Clause 29.1</p>	<p>Clause 29.1 has been amended</p> <p>29.1 The Provider should obtain its own advice as to whether 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 Complying with the UK's international obligations on subsidy control: guidance for public authorities - GOV.UK (www.gov.uk).</p>	<p>29 Subsidy Control</p>
<p>Clause 29.2</p>	<p>Clause 29.2 has been amended and Sub-Clauses 29.2.1 and 29.2.2 have been added</p> <p>29.2 Where the rules on Subsidy Control apply, the Provider must:</p> <p>29.2.1 comply with the relevant notification requirements; and</p> <p>29.2.2 collect and retain appropriate records and will supply those records to the Department on its request.</p>	<p>29 Subsidy Control</p>
<p>Clause 29.5</p>	<p>Clause 29.5 has been deleted and replaced with the following:</p>	<p>29 Subsidy Control</p>

Section	Change	Clause Reference
	29.5 If a recovery order or any other enforcement measure is taken under the Subsidy Control Act 2022, the Provider will repay the relevant subsidy to the Department within 28 days or such other timescale that the Department agrees with the Provider.	
Clause 31.1.1 (g)	<p>Clause 31.1.1 (g) has been amended</p> <p>(g) In all other respects, any negligent act, default or breach of statutory duty in connection with the performance or non-performance by the Provider of its obligations under this Agreement or of any Provider Personnel in the performance or non-performance of the Services.</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), Clause 31.8 (No Limit on Liability) and Clause 31.12 (Indirect Loss), 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> <p>31.11.1 Subject to Clause 31.8 (No Limit on Liability) and Clause 31.12 (Indirect Loss), the liability of the Department 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.</p>	31 Indemnities and Liability
Clause 34.4	<p>Clause 34.4 has been amended to remove the words ‘without the Department’s permission’ as follows:</p> <p>34.4 The Provider will not hold itself out as acting on behalf of the Department.</p>	34 Prohibited Acts

Section	Change	Clause Reference
Clause 35.1.10	<p>Clause 35.1.10 has been added</p> <p>35.1.10 The Department is entitled to withhold or suspend payment of Funding under any other provisions in this Agreement.</p>	35 Withholding, Suspension and Repayment of Funding
Clause 35.2	<p>Clause 35.2 has been added</p> <p>35.2 Without prejudice to or limiting the provisions of Clause 35.1.1, where more than one breach (which are not material breaches) have occurred, those breaches (taken together) may be regarded as a material breach.</p>	35 Withholding, Suspension and Repayment of Funding
Clause 35.2	<p>Clause 35.2 has been amended and renumbered as 35.3</p> <p>35.3 Rights to withhold, suspend and/or require repayment of the Funding are set out in other provisions in this Agreement and in the Funding Rules (as amended from time to time).</p>	35 Withholding, Suspension and Repayment of Funding
Clause 36 and 37	<p>There have been several amendments to Clause 36 (Termination) and Clause 37 (Consequences of Termination and Expiry). These clauses have been reordered, some duplication has been removed and Clause 37 has been updated to add clauses that have been deleted from Clause 36. Please refer to the revised clauses within your Agreement which incorporate all amendments.</p>	Clause 36 Termination and Clause 37 Consequences of Termination and Expiry
Clause 40.1	<p>Clause 40.1 has been amended and Sub-Clauses 40.1.1, 40.1.2 and 40.1.3 have been added</p> <p>40.1 Any notice or other document to be given under this Agreement must be in writing and personally delivered, emailed, sent through the Department's electronic portal or sent by first class post to the address of the relevant party, as referred to above or in the case of an email address or correspondence address, as notified by the</p>	40 Service of Notices

Section	Change	Clause Reference
	<p>relevant party in writing from time to time. The notice or communication will be considered delivered as follows:</p> <p>40.1.1 if personally delivered, when handed over to the addressee;</p> <p>40.1.2 if sent by email or through the Department's electronic portal, on the day the email is sent if sent on a Working Day and before 5.00 pm, otherwise the email will be deemed delivered at 9.00 am on the next Working Day;</p> <p>40.1.3 if sent by first class post, on the second Working Day after the day on which it is posted.</p>	
Clause 40.2	<p>Clause 40.2 has been amended</p> <p>40.2 All such notices and communications must be in the English language. To prove the giving of a notice or other document it will be sufficient to show that it was despatched.</p>	40 Service of Notices
Clause 42.1	<p>Clause 42.1 has been renamed "No Partnership, Joint Venture or Employment" and Clause 42.1.1 has been amended to add the words "or joint venture"</p> <p>42.1 No Partnership, Joint Venture or Employment</p> <p>42.1.1 Nothing in this Agreement will be construed as creating a partnership or joint venture or as an agreement of employment between the Department and the Provider.</p>	42 No Agency
Clause 42.2	<p>Clause 42.2 has been renamed "No Agency or Power to Bind"</p>	42 No Agency

Section	Change	Clause Reference
<p>Clause 44.1</p>	<p>Clause 44.1 and Sub-Clauses 44.1.1 and 44.1.2 have been amended</p> <p>44.1 The Provider must not by itself, its employees or agents and shall procure that its Provider Personnel must not:</p> <p>44.1.1 take part in any communications with representatives of the press, television, radio or other communications media on any matter concerning this Agreement; and/or</p> <p>44.1.2 use or make use of the Department's name, logo or other branding without the prior written approval of the Department.</p>	<p>44 Public Relations and Publicity</p>
<p>Clause 46.1</p>	<p>Clause 46.1 has been amended</p> <p>46.1 No term or provision of this Agreement will be considered as waived by any Party to this Agreement unless a waiver is given in writing by that Party. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.</p>	<p>46 Waiver</p>
<p>Subject matter of the Processing</p>	<p>Details have been amended</p> <p>The subject matter is the Personal Data of Learners on education or training programmes administered by the Department that are subject to this Agreement as defined in the Department Personal Information Charter, the privacy notice for Key Stage 5 and adult education and the ILR privacy notice and documentation</p> <p>Personal information charter - Department for Education - GOV.UK (www.gov.uk)</p> <p>Privacy notice for Key Stage 5 and adult education - GOV.UK (www.gov.uk)</p>	<p>Schedule 6: UK GDPR and Data Protection</p>

Section	Change	Clause Reference
	ILR Privacy Notice 2023 to 2024 version 1 May 2023 (submit-learner-data.service.gov.uk)	
Retention and destruction of the data once the processing is complete UNLESS requirement by UK Law to preserve that type of data	Description has been renamed “Plan for return and destruction of the data once the processing is complete UNLESS requirement under Union or Member State law to preserve that type of data”	Schedule 6: UK GDPR and Data Protection
Paragraph 1.2	Paragraph 1.2 has been amended 1.2 The Provider must select its Sub-Contractors fairly and without discrimination and must comply with any procurement rules that apply when doing so, including the Public Contracts Regulations 2015 (as may be amended from time to time) where the Provider is a contracting authority under those regulations.	Schedule 9: Sub-Contracting
Various paragraphs	Paragraphs 1.4, 1.8.1, 1.12, 1.20, 1.21, 1.27 and 1.28 of Schedule 9: Sub-Contracting have been amended to include references to the relevant headings in the Sub-Contracting Funding Rules Paragraphs 1.27 and 1.28 have also been renumbered as Paragraphs 1.25 and 1.26	Schedule 9: Sub-Contracting
Paragraphs 1.22 and 1.23	Paragraphs 1.22 and 1.23 have been deleted	Schedule 9: Sub-Contracting
Paragraph 1.24	Paragraph 1.24 has been amended and renumbered as Paragraph 1.22	Schedule 9: Sub-Contracting

Section	Change	Clause Reference
	<p>1.22 The Provider must continuously review the size of its sub-contracted Services and ensure this does not exceed the Sub-Contracting Threshold of 25%.</p>	
<p>Paragraphs 1.25 and 1.26</p>	<p>Paragraphs 1.25 and 1.26 have been deleted and replaced with the new Paragraphs 1.23 and 1.24</p> <p>1.23 The Provider must promptly submit an Exemption Case (as defined in the Sub-Contracting Funding Rules) if it anticipates that its Sub-Contracting will exceed the Sub-Contracting Threshold. The Provider must submit such Exemption Case no less than twelve (12) weeks prior to exceeding the Sub-Contracting Threshold. The Department may consider Exemption Cases that are submitted later if the Provider provides evidence of exceptional circumstances. The Department reserves the right to decline the Provider's Exemption Case.</p> <p>1.24 If the Provider has previously submitted an Exemption Case, it should continue to seek permission to exceed the Sub-Contracting Threshold and must submit an Exemption Case to the Department by no later than 11.59pm on 31 March in each Funding Year. The Department may consider Exemption Cases that are submitted later if the Provider provides evidence of exceptional circumstances. The Department reserves the right to decline the Provider's Exemption Case.</p>	<p>Schedule 9: Sub-Contracting</p>

Paragraph 1.31	Paragraph 1.31 has been amended and re-numbered as Paragraph 1.29 1.29 If the aggregate total of all Sub-Contractors delivering ESFA funded provision on the Provider's behalf exceeds or is anticipated to exceed £100,000 in any academic year, the Provider must meet the requirements detailed in ESFA subcontracting standard - GOV.UK (www.gov.uk) . The £100,000 threshold includes Apprenticeships, ESFA-Funded Adult Education Budget and 16 to 19 provision sub-contracted by the Provider.	Schedule 9: Sub-Contracting
-----------------------	--	-----------------------------

Non-Maintained Special Schools (NMSS)

Section	Change	Clause Reference
“Entire Agreement”	All references to “Her Majesty” have been deleted and replaced with “His Majesty” throughout the Agreement	Entire Agreement
“Entire Agreement”	All references to “learner” (with the exception of “High Needs Learner”) have been deleted and replaced with “Pupil”	Entire Agreement
“Department”	Definition has been amended means the Secretary of State for Education acting through the Department for Education and / or Education and Skills Funding Agency (ESFA) as appropriate;	1 Definitions
“EIR”	Definition has been added means the Environmental Information Regulations 2004;	1 Definitions
“Exemption Case”	Definition has been added means the case submitted by the NMSS to the Department in accordance with “Subcontracting threshold and exemption cases” of the Sub-Contracting Funding Rules for permission to exceed the Sub-Contracting Threshold;	1 Definitions
“Funding Higher Risk Organisations Policy”	Definition has been added means the policy described in Schedule 9: Sub-Contracting and available at Funding higher risk organisations and subcontractors policy - GOV.UK (www.gov.uk)	1 Definitions
“Funding Period”	Definition has been added means the period set out on page 1 of this Agreement.	1 Definitions

Section	Change	Clause Reference
“Sub-Contract”	Definition has been amended means an agreement entered into between the NMSS and a Sub-Contractor for the purposes of engaging the Sub-Contractor to deliver part of the Services on behalf of the NMSS;	1 Definitions
“Sub-Contracting”	Definition has been added means any delivery to a Pupil’s programme of learning by a separate legal entity, irrespective of whether such learning is provided by a third party recruited to deliver on site (travel to teach), online learning or whether it is described as a service.	1 Definitions
“Sub-Contractor”	Definition has been amended means a separate legal entity or an individual (not an employee) that has an agreement (called a Sub-Contract) with the NMSS to deliver any element of the Services the Department funds. A separate legal entity includes but is not limited to companies in the NMSS’s group, other associated companies and sole traders. An individual could include a person who is a sole trader, self-employed, a freelancer or someone who is employed by an agency, unless those individuals are working under the NMSS’s direct management and control in the same way as the NMSS’s own employees. This does not include relationships between the NMSS and other third parties providing services such as marketing;	1 Definitions
Clause 3.5	Clause 3.5 has been added 3.5 The NMSS will comply in all respects with all relevant Laws to which it may be subject.	3 Service Delivery
Clause 5.2.3	Clause 5.2.3 has been amended	5 Performance Monitoring

Section	Change	Clause Reference
	<p>5.2.3 Without prejudice to the Department’s rights under Clauses 35 (Withholding, Suspension, and Repayment of Funding) and 36.2 (Termination) and to any other express rights under this Agreement, where the NMSS has been found to be fraudulent or have recklessly submitted erroneous reports, claims and/or Pupil data, or the Department reasonably believes such reports to be fraudulent or erroneous the Department may, by notice to the NMSS, increase the level of its monitoring of the NMSS or (at the Department’s option) require the NMSS to increase the level of the NMSS’s monitoring of its own performance of its obligations under this Agreement in respect of the relevant Services which are the subject of such fraudulent, erroneous or misleading reporting until such time as the NMSS must have demonstrated to the reasonable satisfaction of the Department that it will perform (and is capable of performing) its obligations under this Agreement and, in which case, the following provisions will apply:</p>	
<p>Clause 5.2.3(d)</p>	<p>Clause 5.2.3(d) has been amended to remove the words “save where there is no evidence that the NMSS has been found to have been fraudulent or to have submitted erroneous reports and the NMSS has been exonerated”, as follows:</p> <p>(d) the NMSS will bear its own costs and indemnify and keep the Department indemnified at all times from and against all costs and expenses reasonably and properly incurred by or on behalf of the Department in relation to such increased level of monitoring.</p>	<p>5 Performance Monitoring</p>
<p>Clause 11.6</p>	<p>Clause 11.6 has been amended</p> <p>11.6 The Department may require the NMSS to procure an independent business review of the NMSS’s financial health at the NMSS’s cost (or the Department may procure such a review and recharge the costs to</p>	<p>11 Financial Health</p>

Section	Change	Clause Reference
	the NMSS, at its sole discretion) if the Department has concerns over the financial health of the NMSS.	
Clause 12.1	<p>Clause 12.1 has been amended to remove the words “and allow the Department’s nominated representative to attend the meeting”, as follows:</p> <p>12.1 When the NMSS receives notification from an Inspectorate that the Services are to be inspected, the NMSS will, on request, provide the Department with details of its quality improvement activity, and any other relevant information in accordance with the required timescale of the Inspectorate. The NMSS must promptly notify the Department via the Contact Form: General Enquires at Education and Skills Funding Agency - GOV.UK (www.gov.uk) of the date of the meeting at which an Inspectorate gives feedback on the inspection. The NMSS must confirm to the Department in writing the outcome of the inspection within 5 Working days of receiving the feedback from the Inspectorate.</p>	12 Inspections
Clause 12.3	<p>Clause 12.3 has been amended</p> <p>12.3 Where Ofsted has published its assessment that 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>	12 Inspections
Clause 12.7	<p>Clause 12.7 has been amended</p> <p>12.7 The Department will take action based on the Inspectorate’s published outcomes as in Clause 12.5 above. Where the Department is made aware that the NMSS has made a complaint about the graded outcome of the overall assessment by Ofsted, the Department will continue to progress action under Clauses 12.4 to 12.5 but will be mindful of the implications arising from the outcome of a complaint. The Department</p>	12 Inspections

Section	Change	Clause Reference
	will review any decisions made at such time as outcomes of any complaint are made known.	
Clause 14.4	<p>Clause 14.4 has been amended and split out into 3 new Sub-Clauses</p> <p>14.4 Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to:</p> <p>14.4.1 the delivery of this Agreement; or</p> <p>14.4.2 the delivery of any other Agreement between the Department and the NMSS; or</p> <p>14.4.3 the payments made under this Agreement or any other agreement between the Department and the NMSS;</p> <p>the Department will have the right to suspend payments and/or require the NMSS to suspend enrolment of Pupils under this Agreement and any other Agreement between the Parties.</p>	14 Fraud and Irregularity
Clause 15.2.1	<p>Clause 15.2.1 has been amended</p> <p>15.2.1 The NMSS must and will ensure that its Sub-Contractors will at all times during the Agreement Period and for a period of six (6) years thereafter, or such other time period as stated in the Schedule 1 (Specification & Monitoring), at its own cost, fully co-operate with any enquiry, investigation or inspection (whether routine or specific) which in any way concerns, affects or relates to the Services, or any sum claimed or charged in relation to this Agreement or to any other Agreement of the Department. Such enquiry, investigation or inspection may be by, inter alia:-</p>	15 Relationships

Section	Change	Clause Reference
Clause 17.1.4	<p>Clause 17.1.4 has been added</p> <p>17.1.4 For the avoidance of doubt, the Department shall not be obliged to follow the Dispute Resolution Procedure in circumstances where it wishes to terminate this Agreement in any circumstances described in Clause 36 (Termination).</p>	17 Dispute Resolution
Clause 23	<p>Clause 23 has been amended to include references to “the EIR” throughout</p>	23 Freedom of Information and Confidentiality
Clause 23.2.3(a)	<p>Clause 23.2.3(a) has been amended</p> <p>(a) which is or becomes public knowledge (other than by breach of Clauses 23.2.1 and 23.2.2 or any other duty of confidentiality);</p>	23 Freedom of Information and Confidentiality
Clause 24.4.1	<p>Clause 24.4.1 has been amended</p> <p>24.4.1 they are questioned as to whether they have any Convictions or ASBOs or any other punishment for antisocial behaviour order (such as a civil injunction, community protection notice or criminal behaviour order);</p>	24 Employees
Clause 24.10	<p>Clause 24.10 has been amended</p> <p>24.10 Failure by the NMSS to comply with Clauses 24.4 to 24.9 will constitute a material breach of this Agreement.</p>	24 Employees
Clause 24.16	<p>Clause 24.16 has been amended</p> <p>24.16 The NMSS must inform the Department if directors, or any other person who has powers of representation, decision or control, meet the characteristics set out in the Funding higher-risk organisations and Sub-</p>	24 Employees

Section	Change	Clause Reference
	<p>Contractor document. Department for Education policy on funding higher risk organisations and subcontractors - GOV.UK (www.gov.uk). Failure to inform the Department will be a material breach of the Agreement.</p>	
<p>Clause 24.18</p>	<p>Clause 24.18 has been amended</p> <p>24.18 The NMSS must ensure that it and any Sub-Contractors have in place and maintain personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The NMSS must ensure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form. The NMSS must provide copies of such policies to the Department, on the Department's request.</p>	<p>24 Employees</p>
<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 procure an independent 100% audit of all or part of the Services by a deadline specified by the Department and / or 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 and Audit</p>

Section	Change	Clause Reference
Clause 28.2.1	<p>Clause 28.2.1 has been amended</p> <p>28.2.1 The Department (in accordance with Post-16 audit code of practice - GOV.UK (www.gov.uk)), the European Commission, the European Court of Auditors and/or a Crown Body may at any time conduct (whether itself or by its agents, consultants or advisers) audits for the following purposes:-</p>	28 NMSS's Records and Audit
Clause 28.5.3	<p>Clause 28.5.3 has been amended</p> <p>28.5.3 Where the Department appoints an independent third party to undertake, exercise or carry out any of the rights or powers contained in this Clause 28 (NMSS's Records and Audit), the Department must ensure that, simultaneously with its appointment, such independent third party enters into a confidentiality agreement with the Department that requires the independent third party to comply with confidentiality provisions equivalent to those set out in this Agreement.</p>	28 NMSS's Records and Audit
Clause 31.1.1(g)	<p>Clause 31.1.1(g) has been amended</p> <p>(g) In all other respects, any negligent act, default or breach of statutory duty in connection with the performance or non-performance by the NMSS of its obligations under this Agreement or of any NMSS Personnel in the performance or non-performance of the Services.</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), Clause 31.8 (No Limit on Liability) and Clause 31.12 (Indirect Loss), 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</p>	31 Indemnities and Liability

Section	Change	Clause Reference
	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 Subject to Clause 31.8 (No Limit on Liability) and Clause 31.12 (Indirect Loss), the liability of the Department 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 34.4	Clause 34.4 has been amended to remove the words “without the Department’s permission’, as follows: 34.4 The NMSS will not hold itself out as acting on behalf of the Department.	34 Prohibited Acts
Clause 35.1.10	Clause 35.1.10 has been added 35.1.10 the Department is entitled to withhold or suspend payment of Funding under any other provisions in this Agreement.	35 Withholding, Suspension and Repayment of Funding
Clause 35.2	Clause 35.2 has been added 35.2 Without prejudice to or limiting the provisions of Clause 35.1.1, where more than one breach (which are not material breaches) have occurred, those breaches (taken together) may be regarded as a material breach.	35 Withholding, Suspension and Repayment of Funding
Clause 35.2	Clause 35.2 has been amended and renumbered as Clause 35.3 35.3 Rights to withhold, suspend and/or require repayment of the Funding are set out in other provisions in this Agreement and in the Funding Rules (as amended from time to time).	35 Withholding, Suspension and Repayment of Funding

Section	Change	Clause Reference
Clauses 36 and 37	There have been several amendments to Clause 36 (Termination) and Clause 37 (Consequences of Termination and Expiry). These clauses have been reordered, some duplication has been removed and Clause 37 has been updated to add clauses that have been deleted from Clause 36. Please refer to the revised clauses within your Agreement which incorporate all amendments.	36 Termination 37 Consequences of Termination and Expiry
Clause 40.1	<p>Clause 40.1 has been amended and Sub-clauses 40.1.1, 40.1.2 and 40.1.3 have been added</p> <p>40.1 Any notice or other document to be given under this Agreement must be in writing and personally delivered, emailed, sent through the Department's electronic portal or sent by first class post to the address of the relevant party, as referred to above or in the case of an email address or correspondence address, as notified by the relevant party in writing from time to time. The notice or communication will be considered delivered as follows:</p> <p>40.1.1 If personally delivered, when handed over to the addressee;</p> <p>40.1.2 if sent by email or through the Department's electronic portal, on the day the email is sent if sent on a Working Day and before 5.00 pm, otherwise the email will be deemed delivered at 9.00 am on the next Working Day;</p> <p>40.1.3 if sent by first class post, on the second Working Day after the day on which it is posted.</p>	40 Service of Notices
Clause 40.2	<p>Clause 40.2 has been amended</p> <p>40.2 All such notices and communications must be in the English language. To prove the giving of a notice or other document it will be sufficient to show that it was despatched.</p>	40 Service of Notices

Section	Change	Clause Reference
<p>Clause 42.1</p>	<p>Clause 42.1 has been renamed “No Partnership, Joint Venture or Employment” and Clause 42.1.1 has been amended to add the words “or joint venture”.</p> <p>42.1 No Partnership, Joint Venture or Employment</p> <p>42.1.1 Nothing in this Agreement will be construed as creating a partnership or joint venture or as an Agreement of employment between the Department and the NMSS.</p>	<p>42 No Agency</p>
<p>Clause 42.2</p>	<p>Clause 42.2 has been renamed “No Agency or Power to Bind”</p>	<p>42 No Agency</p>
<p>Clause 44.1</p>	<p>Clause 44.1 and Sub-Clauses 44.1.1 and 44.1.2 have been amended</p> <p>44.1 The NMSS must not by itself, its employees or agents and shall procure that its NMSS Personnel must not:</p> <p>44.1.1 take part in any communications with representatives of the press, television, radio or other communications media on any matter concerning this Agreement; and/or</p> <p>44.1.2 use or make use of the Department’s name, logo or other branding without the prior written approval of the Department.</p>	<p>44 Public Relations and Publicity</p>
<p>Clause 46.1</p>	<p>Clause 46.1 has been amended</p> <p>46.1 No term or provision of this Agreement will be considered as waived by any Party to this Agreement unless a waiver is given in writing by that Party. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.</p>	<p>46 Waiver</p>

Section	Change	Clause Reference
Paragraph 1.2	<p>Paragraph 1.2 has been amended</p> <p>43.4 The NMSS must select its Sub-Contractors fairly and without discrimination and must comply with any procurement rules that apply when doing so, including the Public Contracts Regulations 2015 (as may be amended from time to time) where the NMSS is a contracting authority under those regulations.</p>	Schedule 9: Sub-Contracting
Various paragraphs	<p>Paragraphs 1.4, 1.8.1, 1.12, 1.20, 1.21, 1.27 and 1.28 of Schedule 9: Sub-Contracting have been amended to include references to the relevant headings in the Sub-Contracting Funding Rules.</p> <p>Paragraphs 1.27 and 1.28 have also been renumbered as Paragraphs 1.25 and 1.26.</p>	Schedule 9: Sub-Contracting
Paragraphs 1.22 and 1.23	Paragraphs 1.22 and 1.23 have been deleted	Schedule 9: Sub-Contracting
Paragraph 1.24	<p>Paragraph 1.24 has been amended and renumbered as Paragraph 1.22</p> <p>1.22 The NMSS must continuously review the size of its sub-contracted Services and ensure this does not exceed the Sub-Contracting Threshold of 25%.</p>	Schedule 9: Sub-Contracting
Paragraph 1.25 and 1.26	<p>Paragraphs 1.25 and 1.26 have been deleted and replaced with the new Paragraphs 1.23 and 1.24</p> <p>1.23 The NMSS must promptly submit an Exemption Case (as defined in the Sub-Contracting Funding Rules) if it anticipates that its Sub-Contracting will exceed the Sub-Contracting Threshold. The NMSS must submit such Exemption Case no less than twelve (12) weeks prior to exceeding the Sub-Contracting Threshold. The Department may consider</p>	Schedule 9: Sub-Contracting

Section	Change	Clause Reference
	<p>Exemption Cases that are submitted later if the NMSS provides evidence of exceptional circumstances. The Department reserves the right to decline the NMSS's Exemption Case.</p> <p>1.24 If the NMSS has previously submitted an Exemption Case, it should continue to seek permission to exceed the Sub-Contracting Threshold and must submit an Exemption Case to the Department by no later than 11.59pm on 31 March in each Funding Year. The Department may consider Exemption Cases that are submitted later if the NMSS provides evidence of exceptional circumstances. The Department reserves the right to decline the NMSS's Exemption Case.</p>	
Paragraph 1.31	<p>Paragraph 1.31 has been amended and renumbered as Paragraph 1.29</p> <p>1.29 If the aggregate total of all Sub-Contractors delivering ESFA funded provision on the NMSS's behalf exceeds or is anticipated to exceed £100,000 in any academic year, the NMSS must meet the requirements detailed in ESFA subcontracting standard - GOV.UK (www.gov.uk). The £100,000 threshold includes Apprenticeships, ESFA-Funded Adult Education Budget and 16 to 19 provision sub-contracted by the NMSS.</p>	Schedule 9: Sub-Contracting