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1. INTERPRETATION

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below: -

“Additional Funding”	means funding for Apprentices in need of Functional Skills or Learning Support;
“Apprentice”	means an individual employed by the Customer under an Apprenticeship Agreement and who is an Apprentice in accordance with ESFA Rules and for whom the Supplier is to provide the Services;
“Apprenticeship Agreement”	means a written contract of employment between the Apprentice and the Customer in the form prescribed under the Apprenticeship, Skills, Children and learning Act 2009;
"Approval" and "Approved"	means the written consent of the Customer not to be unreasonably withheld or delayed;
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or such other auditor as may have been appointed in relation to the Customer;
"Commencement Date"	means the date set out in the Order Form;
“Commitment Statement”	means the commitment statement to outline the mutual responsibilities of the Customer, Supplier and Apprentice setting out the information required by the ESFA under ESFA Rules;
"Confidential Information"	means: - any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how

of either Party and all personal data and sensitive data within the meaning of the DPA;

and does not include any information: -

- (i) which was public knowledge at the time of disclosure (otherwise than by breach of this Framework Agreement)
- (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information

"Contract"	means the written agreement between the Customer and the Supplier consisting of the Order Form and these terms and conditions;
"Contract Price"	means the price (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Contract;
"Contracting Authority"	means YPO and any other Contracting Authority for the purposes of the Public Contracts Regulations 2015;
"Crown"	means the government of the United Kingdom including, but not limited to, government ministers and government departments and authorities, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Customer"	means the customer(s) identified in the Order Form;
"Customer Materials"	means all equipment, tools, systems, cabling, facilities, documents, information or property in any form owned by the Customer or associated third party which is provided by the Customer to the Service Provider in connection with delivery of the Services;

“Data Processor”	has the meaning given to it in the Data Protection Legislation, as amended from time to time;
“Data Protection Legislation” or “DPA”	means the Data Protection Act 1998 as long as it remains in force, and when they come into force, the General Data Protection Regulations 2016 (Regulation (EU) 2016/679), the Data Protection Act 2018 as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
“Data Subject”	has the meaning given to it in the Data Protection Legislation, as amended from time to time;
“Data Subject Access Request”	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
"Default"	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other;
"Developed IPRs"	means IPRs developed or created by Learners and/or Apprentices during and/or as a result of delivery of the Services by the Supplier;
“Digital Account”	means the digital apprenticeship service account;

“EPAO”	means the End Point Assessment Organisation to deliver end-point assessment from the Register of End-Point Assessment Organisations;
“ESFA”	means the Education and Skills Funding Agency;
“ESFA Rules”	means the ESFA’s funding rules as made available on.gov.uk and updated from time to time;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
"Force Majeure"	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-</p> <ul style="list-style-type: none">(a) any industrial action occurring within the Supplier's or any sub-contractor's organisation; or(b) the failure by any sub-contractor to perform its obligations under any sub-contract (save where such failure is itself due to an event that would otherwise fall within this definition of Force Majeure);(c) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
"Framework Agreement"	means the framework agreement for the provision of Services to Customers as agreed between YPO and the Supplier;
“Functional Skills”	means functional skills as defined by the ESFA;
“Funding”	means funding paid to the Supplier by ESFA towards the cost of the Services in the form of monies from the Customers Digital Account or through Government-Customer co-investment;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled

	and experienced person or Contracting Authority engaged in a similar type of undertaking under the same or similar circumstances;
"Individual Learner Record" and "ILR"	means the individual learner record created by the Supplier that sets out the primary data as required by the ESFA
"Information"	has the meaning given under section 84 of the FOIA;
"Intellectual Property Rights" and "IPRs"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Authority of which the Supplier is bound to comply;
"Learner"	means the employee or Apprentice of the Customer that will be subject to the delivery of the Services;
"Learning Support"	means help with education or skills, or more specialised support for disabled or deaf learners, or anyone who needs help with literacy, language and numeracy;
"Material Default"	means any breach of clauses 6 (Conflict of Interest), 22 (Prevention of Bribery and Corruption), 25 (Health and Safety), 26 (Data Protection), 27 (Freedom of Information Act), 31 (Records and Audit Access), 32 (Transfer and Sub-Contracting), 39 (Warranties and Representations)
"Month"	means calendar month
"Order and "Order Form"	means the order submitted to the Supplier by the Customer in accordance with the Framework Agreement which sets out the description of the Services to be supplied including, where appropriate, the key personnel, the Premises, the timeframe, the Services.

"Parent Company"	means any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company, and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding Company" shall have the meaning ascribed in Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
"Party"	means the Supplier and/or the Customer;
"Personal Data"	has the meaning given to it in the Data Protection Legislation as amended from time to time;
"Pre-Existing IPR"	means any Intellectual Property Rights vested in or licensed to the Customer or the Supplier prior to or independent of the performance by the Customer or the Supplier of their obligations under the Contract and in respect of the Customer includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
"Premises"	means the location where the Services are to be supplied, as set out in the Order Form;
"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
"Prohibited Act"	means any offence, as described in the Bribery Act 2010;
"Request for Information"	shall have the meaning set out in the FOIA;
"Services"	means the Services as set out in this Contract, including all incidental or ancillary services required to deliver the Services;
"Staff"	means all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier's servants, agents, suppliers and

sub-contractors used in the performance of its obligations under the Contract;

“Sub-Processor”	means any third Party appointed to Process Personal Data on behalf of the Supplier related to this Call Off Contract;
“Supplier”	means the person, firm or company or organisation whom executes this Contract and includes any employee, agent, servant, sub-contractor or representative of the supplier or person employed by on or on behalf of the supplier to provide the Services.
“Supplier Materials”	means all equipment, tools, systems, cabling, facilities, documents, information or property in any form provided by the Service Provider which is used directly or indirectly by the Service Provider in connection with delivery of the Services
"Tender"	means the document(s) submitted by the Supplier to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Services
“Term”	means the term as set out in the Order Form
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales
“YPO”	means YPO, any employee, agent servant or representative of YPO or any other public authority or person employed on behalf of YPO

The interpretation and construction of the Contract shall be subject to the following provisions:-

- 1.1 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2 Words importing the masculine include the feminine and the neuter;
- 1.3 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.4 References to any person shall include natural persons and partnerships, firms and other incorporated authorities and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.5 References to any statute, enactment, order, regulation or other similar instrument shall be construed as including any amendment by any subsequent enactment, modification, order, regulation or instrument;
- 1.6 Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and

- 1.7 Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.8 Reference to any employees of the Supplier shall be deemed to include the Supplier's agents and sub-contractors unless expressly stated otherwise.
- 1.9 "Time" shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Term.

2. TERM

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended as provided for within the Order Form.

3. SUPPLIERS STATUS

- 3.1 At all times during the Term the Supplier shall be an independent Supplier and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

4. ENTIRE AGREEMENT

- 4.1 Subject to the provisions of the Framework Agreement relating to Call-off Contracts, this Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt within it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 4.2 Each of the Parties acknowledge and agree that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- 4.3 Nothing in Clauses 4.1 and 4.2 shall operate to exclude fraud or fraudulent misrepresentation.
- 4.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-
 - 4.4.1 the clauses of the Contract
 - 4.4.2 the Order Form;
 - 4.4.3 the Framework Agreement and its Schedules; and
 - 4.4.4 any other document referred to in the clauses of the Contract
- 4.5 For the avoidance of doubt any terms that the Supplier may seek to impose and which in any way vary or contradict these Contract Order terms shall be excluded and not form part of the Order.

- 4.6 The Contract may be executed in counterparts each of which when executed and delivered shall constitute a duplicate original, but all the counterparts together shall constitute the one agreement.

5. NOTICES

- 5.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, or items of electronic mail.
- 5.3 For the purposes of Clause 5.2, the address of each Party shall be:
- 5.3.1 For the Customer: the address set out in the Order Form.
- 5.3.2 For the Supplier: the address set out in the Framework Agreement.
- 5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

6. CONFLICTS OF INTEREST

- 6.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract.
- 6.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 6.1 above arises or is reasonably foreseeable.
- 6.3 A Supplier may be considered to have a conflict of interest, if the Supplier:
- (a) Directly or indirectly controls, is controlled by or is under common control with another Supplier;
 - (b) Receives or has received any direct or indirect subsidy from another Supplier;
 - (c) Has a relationship with another Supplier, directly or through common third parties, that puts it in a position to influence another Supplier regarding the provision of Services under this Contract;
 - (d) Has a close business or family relationship with an employee of a Customer involved in the tendering of this Contract.
- 6.4 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the

provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

7. PREVENTION OF FRAUD

- 7.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 7.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 7.3 If the Supplier or its Staff commits any fraud in relation to this or any other contract with YPO, a Contracting Authority or the Customer, the Customer may: -
 - 7.3.1 terminate the Contract with immediate effect by giving the Supplier notice in writing and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Term; and/or
 - 7.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

8. REQUEST FOR SERVICES

- 8.1 The Customer will request Services from the Supplier by utilising the Order Form as set out in Annex 1 of this agreement
- 8.2 The Customer will set out in writing the Services it requires and will provide the Supplier with any information that it reasonably requires in order to facilitate the request.
- 8.3 The Supplier on receipt of the draft Order Form from the Customer will within a reasonable time, inform the Customer and YPO of its intent to provide the services or otherwise inform the Customer of its intent to decline the offer.
- 8.4 Where the Supplier agrees to supply the Services, the Parties shall agree the following which is to be included within the Order Form before acceptance;
 - 8.4.1 The Services to be supplied;
 - 8.4.2 Eligibility of the Learner (with regard to work base location)
 - 8.4.3 The agreed timetable for delivery including start and end dates and examination;
 - 8.4.4 Confirmation of accreditation;
 - 8.4.5 Confirmation of the awarding body (if applicable;)
 - 8.4.6 All applicable charges that will apply to the Service delivery;
 - 8.4.7 Confirmation of Funding if applicable;
 - 8.4.8 Applicable Customer Materials;

8.4.9 Applicable Supplier Materials;

8.4.10 Conformation of any agreed subcontracted provision; and

8.4.11 Conformation of whom shall record the Apprentice with the ESFA (if applicable.)

8.5 Where the Supplier intends to subcontract all or any part of the Services, the Order Form will also specify the following

8.5.1 The split between the Services delivered by the Supplier and the Subcontractor;

8.5.2 The amount of funding payable to each Subcontractor for their contribution;

8.5.3 The support that the Supplier will provide to the Subcontractor; and

8.5.4 The monitoring that the Supplier will undertake to ensure the quality of the Services delivered by the Subcontractor.

8.6 The finalised Order Form shall be negotiated in good faith between the Parties and without any obligation on either Party to agree.

8.7 The finalised Order Form will be signed by both Parties prior to the delivery of any Services.

9. VARIATION TO SERVICES

9.1 Subject to the provisions of this Clause 9.1, the Customer may request a variation to Services ordered provided that such variation does not amount to a material change to the Services. Such a change is hereinafter called a "Variation".

9.2 The Customer may request a Variation by completing and sending the Terms and Conditions Variation form attached at Appendix 2 ("**the Variation Form**") to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.

9.3 In the event that the Supplier is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:

9.3.1 agree to allow the Supplier to continue to perform their obligations under the Contract without the Variation where the Parties fail to agree on a change to the Contract Price; or

9.3.2 instigate the Dispute Resolution Procedure as set out in clause 49;

9.4 If the Parties agree the Variation and any variation in the Contract Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

10. CUSTOMER OBLIGATIONS

10.1 The Customer confirms that it shall:

10.1.1 provide the Supplier with all reasonable support and information it requires in relation to the Learner during and prior to Service delivery;

- 10.1.2 at all times provide the Supplier with up to date information on the Learners employment status or if applicable, required breaks in learning;
 - 10.1.3 where available, provide the Supplier with any information it may reasonably require in relation to previous training or qualifications that the Learner may have received;
 - 10.1.4 pay all undisputed sums owed to the Supplier for delivery of the Services in accordance with clause 19 of this Contract;
 - 10.1.5 appoint a manager to act on behalf of the Customer for to all matters relating to delivery of the Services and use all reasonable endeavours to ensure that the same person acts as the manager for the duration of the agreement; and
 - 10.1.6 where required, provide the Supplier with access to the Customers premises in order to deliver the Services
- 10.2 Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Supplier.

11. SUPPLIER OBLIGATIONS

- 11.1 In the delivery of the Services, the Supplier agrees that it shall:
- 11.1.1 Provide the Services in accordance with the agreed Order Form in all material respects;
 - 11.1.2 comply with all relevant legislation, codes of conduct and regulations governing the provision of the Services;
 - 11.1.3 ensure that all Staff providing the Services shall do so with all due skill, care and diligence and shall possess such qualifications, certification, skills and experience as are necessary for the proper provision of the Services;
 - 11.1.4 confirm the eligibility of the Learner to receive the Services at the commencement of the delivery of the Services;
 - 11.1.5 where applicable, manage and regularly assess all aspects of subcontractor performance through visits, interviews and regular meetings to ensure delivery of the Services in accordance with the Call-Off Contract;
 - 11.1.6 appoint a manager to act on behalf of the Supplier for all matters relating to delivery of the Services and use all reasonable endeavours to ensure that the same person acts as the manager for the duration of the agreement;

11.2 The Supplier warrants that where it uses any subcontractor to deliver any of the Services, that the Supplier:

11.2.1 has the knowledge, skills and experience of contracting with and managing subcontractors; and

11.2.2 it has assessed the subcontractor as suitable to deliver the Services.

11.3 The Supplier warrants that it will not:

11.3.1 accept information from the Customer without conformation that the information is acceptable for the purpose it is being used; and

11.3.2 enrol a Learner without first confirming they meet all eligibility requirements required to receive the Services

11.4 If the Suppliers performance is delayed by any act or omission of the Customer, then without prejudice to any other rights it may have, the Supplier shall be permitted an extension of time to perform its obligations equal to the delay caused by the Customer or further if agreed between the Parties.

12. APPRENTICESHIPS

12.1 Where the Services required are for Apprenticeships the following provisions will apply

12.2 In accordance with ESFA Rules, the Supplier will:

12.2.1 prepare the Commitment Statement at the commencement of delivery of Services to the Apprentice;

12.2.2 create, develop and update the ILR in accordance with the ESFA Rules

12.2.3 confirm the eligibility of the Apprentice to undertake an apprenticeship at the commencement of the delivery of the Services;

12.2.4 only use funds in the Digital Account for delivery of Services to eligible individuals;

12.2.5 retain evidence of eligibility for each Apprentice for a reasonable period during and after completion of the Apprenticeship;

12.2.6 conduct a thorough functional skills assessment based on the national literacy and numeracy standards if an Apprentice needs further training before they are able to achieve a Level 2 standard and the Supplier is seeking Additional Funding for this;

- 12.2.7 assess any additional learning support or functional skills development that may require Additional Funding and record the requirement within the ILR;
- 12.2.8 where an additional support requirement is identified, deliver support and record all outcomes within an evidence pack and retain evidence of all assessments for a reasonable period during and after completion of the Apprenticeship;
- 12.2.9 deliver the Apprenticeship training associated with the Customers apprenticeship programme or an open apprenticeship programme that complies with an approved apprenticeship standard;
- 12.2.10 where the Apprentices are studying for an apprenticeship standard, contract with an t EPAO as selected by the Customer to carry out a final assessment for the Apprentice and agree with it, the arrangements for end-point assessments, re-takes and payments;
 - (a) Unless reasonable grounds exist for a rejection, where the Customer fails to accept the Suppliers chosen EPAO within 14 days of the EPAO having been identified, the Supplier shall be entitled to appoint such organisation to carry out a final assessment as it reasonably sees fit.
 - (b) The Supplier shall be wholly responsible for making payment to the EPAO for conducting the end-point assessment and any re-takes and shall record all payments made to the EPAO.
- 12.2.11 extend the actual end date for the Apprenticeship if the working hours fall below 30 hours a week;
- 12.2.12 where applicable, manage and regularly assess all aspects of subcontractor performance through visits, interviews and regular meetings to ensure delivery of the Services in accordance with the ESFA Rules;
- 12.2.13 invoice for co-investments every 3 months or shorter time frame where agreed and report the value received on the ILR; and
- 12.2.14 where the Apprentices are studying for an apprenticeship framework, ensure the apprenticeship completion certificate is applied for within three months of completion of learning.

12.3 In accordance with ESFA Rules, the Supplier will not:

- 12.3.1 accept information from the Customer without conformation from the ESFA that the information is acceptable for the purpose it is being used;

- 12.3.2 use Customer or government funding for delivery of the Services where they or another organisation are claiming other funding for the same purpose;
- 12.3.3 claim funding for any part of the Apprentices programme that duplicates provision they have already received from any other source;
- 12.3.4 use any subcontractor for the delivery of Services unless it is on the published register of apprenticeship training providers;
- 12.3.5 commence an Apprenticeship if there is no prospect of the Apprentice completing the programme within the amount of time available;
- 12.3.6 enrol an Apprentice without first confirming they meet all eligibility requirements, and, having made all reasonable enquiries, are not enrolled on another Apprenticeship;
- 12.3.7 claim funding for individuals who do not meet eligibility requirements as set out in the ESFA Rules;
- 12.3.8 request any employer contribution if the Customer employs less than 50 employees where the apprentice meets the criteria set out in P103 of the ESFA's Funding and Performance Management Rules for Training Providers (v6); or
- 12.3.9 provide end-point assessment to Apprentices it has trained except where Suppliers may provide end-point assessment to Apprentices it has trained for integrated programmes, subject always to compliance with ESFA Rules

12.4 In accordance with ESFA Rules, the Customer will:

- 12.4.1 enter into an Apprenticeship Agreement with the Apprentice or a fixed term of at least 1 year for a minimum of 30 hours per week or such longer time as may be specified in the Apprenticeship;
 - (a) Where an Apprentice works fewer than 30 hours per week, the minimum duration of the Apprenticeship must be extended pro rata.
- 12.4.2 pay Apprentices at least the minimum wage required by law;
- 12.4.3 provide the Supplier with all reasonable support and information it requires in relation to the Apprentice and the Apprenticeship;
- 12.4.4 at all times provide the Supplier with up to date information on the Apprentice's employment status or breaks in learning;
- 12.4.5 provide the Supplier with such information as it may reasonably require for it to obtain funds from the Customer's Digital Account or the government-employer co-investment;

- 12.4.6 involve the Apprentice in active learning or monitored workplace practice throughout the Apprenticeship programme;
- 12.4.7 extend the working hours of the Apprentice as permitted by Law and agreement with the Apprentice if it is determined that the Apprentice has worked below the minimum number of hours required to complete the Apprenticeship;
- 12.4.8 disclose any reason why the Apprentice may not have enough time to complete the Apprenticeship;
- 12.4.9 ensure that the Apprentice is eligible to and will spend at least 50% of their working hours in England over the duration of the Apprenticeship;
- 12.4.10 ensure that the Apprentice is not already enrolled on any other Apprenticeship programme;
- 12.4.11 where available, provide the Supplier with any information it may reasonably require in relation to previous Apprenticeship training or qualifications that any Apprentice may have received;
- 12.4.12 work with the Supplier to appoint an EPAO in respect of any Apprentices studying an apprenticeship standard; ;
- 12.4.13 confirm with the ESFA the spending of funds from the Digital Account;
- 12.4.14 provide a minimum of 20% off-the-job training where the Apprentices are studying for an apprenticeship standard; and
- 12.4.15 where Functional Skills are required, provide additional paid off-the-job time for this.

12.5 In accordance with ESFA Rules, the Customer will not:

- 12.6 require Apprentices to make financial contributions towards the cost of the Apprenticeship; and
- 12.7 require the Supplier to seek Additional Funding in relation to Learning Support if the funding is being used to support the Apprentice with everyday difficulties not directly related to the Apprenticeship;

12.8 The Parties will:

- 12.8.1 comply with the ESFA Rules and any other rules and conditions at all times and in particular that that may apply where Funding, Additional Funding and/or government-employer co-investment is used to deliver the Services;
- 12.8.2 ensure a written, signed Apprenticeship Agreement has been agreed with the Apprentice which includes the length of employment, the training provided, the working conditions, the Suppliers contact details and the qualifications being worked towards;
- 12.8.3 enter into a written, signed Commitment Statement which must include as a minimum. the planned content and schedule for training, what is expected of the Customer, the

Supplier and the Apprentice, contact details for the Supplier and how complaints and queries will be resolved; and

12.8.4 agree a time for the Apprentice to sit an end-point assessment with the EPAO, where the Apprentices are studying an apprenticeship standard

(a) The Customer will agree a time proposed by the Supplier within 10 Working Days of the Supplier requiring it to do so or where the Customer fails to respond to the proposed requested time, it shall be deemed to be accepted.

13. CONTRACT PERFORMANCE

13.1 In supplying the Services, the Supplier shall perform its obligations under the Contract:

13.1.1 with appropriately experienced, accredited, qualified and trained Staff with all due care and attention;

13.1.2 in a timely manner; and

13.1.3 in compliance with applicable Laws, including any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

13.2 The Supplier shall ensure that:

13.2.1 the Services conform in all respects with the specifications set out, in either the Order Form or where applicable the Framework Agreement;

13.2.2 the Services operate in accordance with the requirements of any accrediting body and correspond with the requirements set out in the Order Form;

13.2.3 the Services conform in all respects with all applicable Laws; and

13.3 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

14. KEY PERSONNEL

14.1 The Parties have agreed to the appointment of key personnel responsible for delivery of the Services. The Supplier shall and shall procure that any sub-contractor shall obtain the prior Approval of the Customer before removing or replacing any key personnel during the Term, and, where possible, at least one (1) Months' written notice must be provided by the Supplier of its intention to replace key personnel.

14.2 The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant key personnel by the Supplier or sub-contractor.

14.3 The Supplier acknowledges that the key personnel are essential to the proper provision of the Services to the Customer. The Supplier shall ensure that the role of any key personnel is not vacant for any longer than thirty (30) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the key personnel whom he or she has replaced.

14.4 The Customer may also require the Supplier to remove any key personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of removing and/or replacing any key personnel.

15. SUPPLIER'S STAFF

15.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises: -

15.1.1 any member of Staff; or

15.1.2 any person employed or engaged by any member of the Staff;

whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

15.2 At the Customer's written request, the Supplier shall provide a list of the names of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

15.3 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.

15.4 If the Supplier fails to comply with Clause 15.2 within two (2) Months of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

15.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 15.2 shall be final and conclusive.

16. INSPECTION OF PREMISES

16.1 Save as the Customer may otherwise direct, the Supplier is deemed to have inspected the Premises before submitting the Tender and to have made appropriate enquiries to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

17. OFFERS OF EMPLOYMENT

17.1 For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Supplier shall employ or offer employment to any of the other Party's Staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

PAYMENT AND CONTRACT PRICE

18. CONTRACT PRICE

18.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with Clause 19 (Payment and VAT).

18.2 The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

18.3 Unless otherwise expressly stated in the Framework Agreement, the Contract or the Order Form, no claim by the Supplier will be allowed for any addition to the Contract Price on the grounds of

any matter relating to any document forming part of the Framework Contract, the Contract or the Order Form or any ambiguity or discrepancy therein on which an experienced Supplier could have satisfied himself by reference to the Customer or any other appropriate means.

19. PAYMENT AND VAT

19.1 To the extent that sums are not actually paid by the ESFA from the Digital Account or the Services are not delivered using Funding, the Customer shall pay all sums due to the Supplier in cleared funds within thirty (30) days of a valid undisputed invoice, submitted in accordance with the payment terms set out in the Order Form

19.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.

19.3 Where the Supplier enters into a sub-contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding thirty (30) days of a valid undisputed invoice, as defined by the sub-contract requirements.

19.4 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.

19.5 Subject to clause 36.13 the Supplier shall indemnify YPO and the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on YPO and/or the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this Clause 19.5 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

19.6 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under Clause 41 (Termination) for failure to pay undisputed sums of money.

20. NOT USED

20.1

21. RECOVERY OF SUMS DUE

21.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Customer.

21.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

21.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

21.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

STATUTORY OBLIGATIONS AND REGULATIONS

22. PREVENTION OF BRIBERY AND CORRUPTION

22.1 The Supplier :

- 22.1.1 has not, will not, and will procure that its Staff have not, and will not commit a Prohibited Act in connection with this Contract;
- 22.1.2 has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010
- 22.1.3 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by YPO or the Customer or that a contract has been reached to that effect in connection with the securing or execution of this Contract, or any other contract with YPO or the Customer, excluding any arrangements of which full details have been disclosed in writing to YPO and/or the Customer prior to the execution of this Contract

22.2 The Supplier will upon request provide the Customer with all reasonable assistance to enable the Customer to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Customer by any relevant government or agency in any relevant jurisdiction. Should the Customer request such assistance the Customer shall pay the reasonable expenses of the Supplier arising as a result

22.3 The Supplier will provide to the Customer certification (if requested to do so), in writing in such form as may be provided by the Customer, to be signed by an officer of the Supplier, of the compliance with this Clause 22 by:

- 22.3.1 the Supplier and
- 22.3.2 all persons associated with the Supplier; and
- 22.3.3 any other persons who are supplying Services in connection with this Contract.

22.4 Certification (if requested) will be provided by the Customer within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Term. The Supplier will provide any evidence of compliance as may reasonably be requested by the Customer.

22.5 The Supplier will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to the Customer and enforced by the Supplier where appropriate.

22.6 Should the Supplier become aware of or suspect any breach of Clause 22.1 it will notify the Customer immediately.

22.7 Following notification under Clause 22.6 the Supplier will respond promptly and fully to the enquiries of the Customer, cooperate with any investigation undertaken by the Customer and allow the Customer to audit any books, records and other relevant documentation. The Supplier's

obligations under this Clause 22.7 shall survive the expiry or termination of this Contract for a further period of six (6) years.

22.8 Subject to Clause 37.13 The Customer may recover in full from the Supplier and the Supplier shall indemnify the Customer in full from and against any other loss sustained by the Customer in consequence of any breach of this Clause 22, whether or not the Contract has been terminated.

22.9 The Customer may terminate this Contract and any Order immediately upon serving written notice if the Supplier or its Staff whether or not acting with the Supplier's knowledge, breaches Clause 22. Before exercising its right of termination under this Clause 22.9 the Customer will give all due consideration to other action beside termination unless the Prohibited Act is committed by:

22.9.1 the Supplier or a senior officer of the Supplier; or

22.9.2 a member of Staff who is not acting independently of the Supplier. The expression 'not acting independently of' (when used in relation to the Supplier or its Staff) means and shall be construed as acting;

(a) with the authority of; or

(b) with the actual knowledge; of any one or more of the Supplier's or Staff (as applicable) directors or partners or

(c) in circumstances where any one or more of the directors (or partners) of the Supplier or its Staff (as applicable) ought reasonably to have had knowledge

22.10 Any notice of termination by the Customer under Clause 22.9 must specify:

22.10.1 The nature of the Prohibited Act; and

22.10.2 The identity of the person whom the Customer believes has committed the Prohibited Act; and

22.10.3 The date on which the Contract will terminate

22.11 In the event of any breach of Clause 22 the Customer is entitled to recover from the Supplier the value of any gift, consideration or commission.

22.12 Notwithstanding Clause 49 (Dispute Resolution) any dispute relating to:

22.12.1 the interpretation of this Clause 22 or

22.12.2 the amount or value of any gift, consideration, commission or other financial advantage shall be determined by the Customer acting fairly and reasonably at all times and its decision shall be final and conclusive

22.13 Termination under Clause 22.9 will:

22.13.1 Be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer under this Contract;

22.13.2 prohibit the Supplier from claiming any damages for early termination;

22.13.3 allow the Customer to recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination; and

22.13.4 subject to clause 37.13, entitle the Customer to be indemnified by the Supplier for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Services from another party.

23. DISCRIMINATION

23.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

23.2 The Supplier shall take all reasonable steps to secure the observance of Clause 23.1 by all its Staff and servants, employees, or agents of the Supplier and all suppliers and Staff employed in the execution of the Contract.

24. THE CONTRACTS (RIGHTS OF THIRD PARTYS) ACT 1999

24.1 A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

25. HEALTH AND SAFETY

- 25.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises as well as any health and safety requirements which may affect the Supplier in the performance of its obligations under the Contract.
- 25.2 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 25.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 25.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Services under the Contract.
- 25.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request

PROTECTION OF INFORMATION

26. DATA PROTECTION

- 26.1 Where any Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Call Off Contract, the Parties acknowledge that both Parties may be the Data Controller or Data Processor.
- 26.2 Both Parties shall:
- (a) Process the Personal Data in order to perform its obligations under this Call Off Contract;
 - (b) ensure that at all times they have in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
 - (c) not disclose or transfer the Personal Data to any third party or Staff unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the other Party (save where such disclosure or transfer is specifically authorised under this Call Off Contract or is specifically required in order for the parties to perform their obligations under this Call Off Contract)
 - (d) take reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that the Staff:

- (i) are aware of and comply with the Call Off Contract;
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Data Controller or as otherwise permitted by this Call Off Contract; and
 - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the DPA);
- (e) notify each other immediately if it becomes aware of an event that results, or may result, in unauthorised access to Personal Data held by it under this Call Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call Off Contract, including any Personal Data breach, or if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the its's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide each other with full cooperation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made including by promptly providing:
 - (i) each other with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested to enable each Party to comply with the Data Subject Access Requests within the relevant timescales set out in the DPA; and
 - (iii) the other, on request, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 26 and provide copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

26.2.2 The Parties shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Call Off Commencement Date, either Party or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country outside the European Economic Area, the following provisions shall apply:

- (a) the Party making the request shall propose a Variation to the other which, if it is agreed by them, shall be dealt with in accordance with the Variation Procedure;
- (b) the requesting Party shall set out in its proposal to the other for a Variation details of the following:

- (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
 - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - (iv) how the Data Processor will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Data Controllers compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Parties shall comply with such other instructions and shall carry out such other actions required to comply with Data Protection Legislation, including:
- (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (1) a direct data processing agreement with the Data Controller on such terms as may be required by them; or
 - (2) a data processing agreement with the Data Processor on terms which are equivalent to those agreed between the Data Controller and the Sub-Contractor relating to the relevant Personal Data transfer, and
 - (iii) in each case which the Parties acknowledge may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

26.2.3 Both Parties shall use reasonable endeavours to assist the other to comply with any obligations under the DPA and shall not perform its obligations under this Call Off Contract in such a way as to cause the other to breach any of their obligations under the DPA to the extent that it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

26.2.4 Both Parties shall designate a data protection officer if required by the Data Protection Legislation.

26.2.5 Before allowing any Sub-Processor to process any Personal Data related to this Call Off Contract, the Data Processor shall:

- (a) notify the Data Controller in writing of the intended Sub-Processor and processing;
- (b) obtain the written consent of the Data Controller;

- (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 26 such that they apply to the Sub-Processor; and provide the Data Controller with such information regarding the Sub-Processor as they may reasonably require.

26.2.6 The Data Processor shall remain fully liable for all acts or omissions of any Sub-Processor.

27. FREEDOM OF INFORMATION ACT

27.1 The Parties acknowledge that each Party may be subject to the requirements of the FOIA and shall assist and cooperate with each other to enable both Parties to comply with their Information disclosure obligations

27.2 The Parties shall and shall procure that its Staff shall:

27.2.1 provide the requesting Party with a copy of all Information in its possession or power in the form that the requesting Party requires within five (5) Working Days (or such other period as may be specified) of the requesting Party's request; and

27.2.2 provide all necessary assistance as reasonably requested to enable the requesting Party to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA.

27.3 The Party dealing with a Request for Information shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether Confidential Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA.

27.4 Where the Supplier is not directly subject to the requirements of the FOIA, it shall transfer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information and shall not otherwise respond directly to a Request for Information unless expressly authorised to do so by the Customer.

27.5 Both Parties acknowledge that (notwithstanding the provisions of Clause 27.2) the other may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA be obliged under the FOIA to disclose information concerning the Contract:

27.5.1 in certain circumstances without consulting the other; or

27.5.2 following consultation with the other Party and having taken their views into account;

27.5.3 provided always that where Clause 27.2 applies the disclosing Party shall, in accordance with any recommendations, take reasonable steps where appropriate, to give the other Party advanced notice, or failing that, to draw the disclosure to the other's attention after any such disclosure.

27.6 Both Parties shall ensure that all Information is retained for disclosure and shall permit the other to inspect such records as requested from time to time.

28. CONFIDENTIAL INFORMATION

28.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

28.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

28.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

28.2 Clause 28.1 shall not apply to the extent that:

28.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA pursuant to Clause 27 (Freedom of Information);

28.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

28.2.3 such information was obtained from a third party without obligation of confidentiality;

28.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

28.2.5 it is independently developed without access to the other party's Confidential Information.

28.3 The Parties may only disclose the other's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

28.4 The Parties shall not, and shall procure that its Staff do not, use any Confidential Information received otherwise than for the purposes of this Contract

28.5 At the written request of either Party, the Parties shall procure that those members of the Staff directly involved in the provision of the Services signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

28.6 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information:

28.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

28.6.2 to any consultant, supplier or other person engaged by the Customer or any person conducting a gateway review;

28.6.3 for the purpose of the examination and certification of the Customer's accounts;

28.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 or the Audit Commission Act 1998 or any relevant Law making similar provision with regard to the Customer of the economy, efficiency and effectiveness with which the Customer has used its resources.

28.7 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Suppliers Confidential Information is disclosed pursuant to Clause 28.6 is made aware of the Customer's obligations of confidentiality.

28.8 Nothing in this Clause 28 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

28.9 The Supplier shall not without the prior written consent of the Customer divulge the existence of the Contract or any Order or disclose any information relating to or contained in the Contract to any person who is not engaged in the performance of the Contract.

28.10 In the event that either Party fails to comply with this Clause 28 the other reserves the right to terminate the Contract by notice in writing with immediate effect.

28.11 The provisions of this Clause 28 shall apply notwithstanding termination of the Contract.

29. SECURITY

29.1 The Customer shall be responsible for maintaining the security of the premises in accordance with its standard security requirements. The Suppliers Staff shall comply with all reasonable security requirements of the Customer while on the premises.

29.2 The Customer shall provide to the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

30. INTELLECTUAL PROPERTY RIGHTS

30.1 Save as granted elsewhere under the Contract, neither the Customer nor the Supplier shall acquire any right, title or interest in the other's Pre-Existing IPR.

30.2 The Supplier shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Customer Pre-Existing IPR or the Developed IPRs to any third party.

30.3 All title to and all rights and interest in the Developed IPRs shall vest in the Customer. The Supplier hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Developed IPRs and/or shall procure that the first owner of the Developed IPRs also does so.

30.4 The assignment under Clause 30.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Developed IPRs, as appropriate.

30.5 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under the Contract.

30.6 If requested to do so by the Customer, the Supplier shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 30.3 or shall procure that the owner of the Developed IPRs does so on the same basis.

30.7 The Customer hereby grants to the Supplier a non-exclusive, revocable, non-assignable licence to use the Customer Pre-Existing IPR and the Developed IPRs during the Term for the sole purpose of enabling the Supplier to supply the Services.

30.8 Subject to Clause 37.13, the Supplier shall, during and after the Term, indemnify and keep indemnified and hold the Customer harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer may suffer or incur as a result of any claim that the performance by the Supplier of the Services infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:

30.8.1 items or materials based upon designs supplied by the Customer; or

30.8.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of the Contract.

30.9 The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:

30.9.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;

30.9.2 shall take due and proper account of the interests of the Customer; and

30.9.3 shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).

30.10 If a successful Claim is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:-

30.10.1 modify the relevant part of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or to the substitute services; or

30.10.2 procure a licence to use materials for the supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,

30.11 In the event that the Supplier is unable to comply with Clauses 30.10.1 or 30.10.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate the Contract with immediate effect by notice in writing.

30.12 In the event that a modification or substitution in accordance with Clause 30.10.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 30.10.2 the Customer shall be entitled to delete the relevant Service from the Contract and/or terminate the Contract with immediate effect.

30.13 This Clause 30 sets out the entire financial liability of the Supplier with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Services hereunder. This shall not affect the Supplier's financial liability for other Defaults or causes of action that may arise hereunder.

31. RECORDS AND AUDIT ACCESS

31.1 The Supplier shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including, the

Services supplied under it, the Call-Off Contracts entered into with YPO and each individual customer and the amounts paid by each Contracting Authority.

- 31.2 The Supplier shall on request provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of six (6) years after the Contract expiry to the Customer, the Customer's representatives and/or the Auditor as may be required from time to time.
- 31.3 The Customer shall use reasonable endeavours to ensure that each audit does not unreasonably disrupt the Supplier or delay the provision or supply of Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 31.4 Subject to the Customer's rights of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including: -
- 31.4.1 all information requested by the Customer within the scope of the audit;
- 31.4.2 reasonable access to sites controlled by the Supplier and to Supplier Materials used in the provision of the Services; and
- 31.4.3 access to the Staff.
- 31.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 31, unless the audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

CONTROL OF THE CONTRACT

32. TRANSFER AND SUB-CONTRACTING

- 32.1 The Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract.
- 32.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its the actions and or omissions of its own Staff.
- 32.3 Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 32.4 Subject to Clause 32.6, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 32.4.1 any Contracting Authority; or
- 32.4.2 any other Authority established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
- 32.4.3 any private sector Authority which substantially performs the functions of the Customer,

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

32.5 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 32.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor Authority to the Customer.

32.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 32.4 to a Authority which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such Authorities being referred to as "**the Transferee**"):

32.6.1 the rights of termination of the Customer in Clause 41 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and

32.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.

32.7 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.

32.8 Each Party shall at its own cost and expense use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

33. WAIVER

33.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

33.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 5.

33.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

34. SEVERABILITY

34.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

34.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

35. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

35.1 Where a complaint is received about the way any Services have been delivered or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 41 (Termination) of the Contract.

35.2 In the event that there has been a material breach of the Contract by the Supplier, then the Customer may, without prejudice to its rights under Clause 41 (Termination), do any of the following:

35.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until the Supplier demonstrates to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;

35.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;

35.2.3 terminate, in accordance with Clause 41 (Termination), the whole of the Contract; and/or

35.2.4 charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

35.3 If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Customer's instructions or such other period of time as the Customer may direct.

35.4 In the event that the Supplier

35.4.1 fails to comply with Clause 35.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

35.4.2 persistently fails to comply with Clause 35.3 above

the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.

36. CUMULATIVE REMEDIES

36.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

LIABILITIES

37. LIABILITY, INDEMNITY AND INSURANCE

37.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

37.1.1 death or personal injury caused by its negligence or that of its Staff;

37.1.2 fraud or fraudulent misrepresentation by it or that of its Staff; and

37.2 Subject to Clause 37.1, 37.3, 37.4 and 37.13 the Supplier shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, , the supply, , of the Services by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, , or any other loss which is caused directly or indirectly by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract or of its obligations arising under the ESFA Rules

37.3 the Customer warrants that it shall indemnify the Supplier against all loss damages costs claims and expenses reasonably incurred by the Supplier:

37.3.1 as a result of the Customer preventing the Supplier from attending and inspecting the Customers premises or where an Apprentice fails to keep an appointment with the Supplier due to an act or omission of the Customer.

37.3.2 failing to disclose any information to the Supplier that was reasonably required by the Supplier to claim Additional Funding due to the Customers failure to provide sufficient information within a reasonable period of time, as well as any change of circumstance relating to the Customer, its Digital Account or the Apprentice

37.4 Subject to Clause 37.1, in no event shall either Party be liable to the other for any:

37.4.1 loss of profits;

37.4.2 loss of business;

37.4.3 loss of revenue;

37.4.4 loss of or damage to goodwill;

37.4.5 loss of savings (whether anticipated or otherwise); and/or

37.4.6 any indirect or consequential loss or damage

37.5 The Customer may, amongst other things, recover as a direct loss the additional cost of procuring replacement Services for the remainder of the Term following termination of the Contract as a result of a default by the Supplier

37.6 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

37.7 Both Parties shall affect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of risks which may be incurred by it, arising out of the performance of its obligations under the Contract, including death or personal

injury, loss of or damage to property or any other loss.. Such insurance shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

37.8 Both Parties shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement in force from time to time.

37.9 Both Parties shall hold public liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

37.10 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause or a brokers verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

37.11 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

37.12 The provisions of any insurance or the amount of cover shall not relieve either Party of any liabilities under the Contract. It shall be the responsibility of each Party to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in this Contract.

37.13 Subject to Clause 37.1, each Party's total aggregate liability in connection with this Contract (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to £5 million (five million pounds UK Sterling).

38. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

38.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. Subject to Clause 37.13 the Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Term or arising from termination or expiry of the Contract.

39. WARRANTIES AND REPRESENTATIONS

39.1 The Supplier warrants and represents that:

39.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

39.1.2 the Contract is executed by a duly authorised representative of the Supplier;

39.1.3 in entering the Contract, it has not committed any fraud;

39.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which

it may become aware which would render any such information, statement or representation to be false or misleading;

- 39.1.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- 39.1.6 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- 39.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 39.1.8 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are required for delivery of the Services;

39.2 in the three (3) years prior to the date of the Contract:

- 39.2.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- 39.2.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- 39.2.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

DEFAULT, DISRUPTION, AND TERMINATION

40. NOT USED

40.1

41. TERMINATION

Termination - Insolvency and Change of Control

- 41.1 Either Party may terminate the Contract with immediate effect by giving notice in writing where the a Party is a company and:
 - 41.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - 41.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - 41.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986;

- 41.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- 41.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- 41.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;
- 41.1.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 41.1.8 any event similar to those listed in Clause 41.1 occurs under the law of any other jurisdiction.

41.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:

- 41.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors;
- 41.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier's bankruptcy;
- 41.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- 41.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986;
- 41.2.5 a creditor or encumbrance attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) days;
- 41.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 41.2.7 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

41.3 The Parties shall notify each other immediately if they undergo a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Party receiving the notification may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

- 41.3.1 being notified that a Change of Control has occurred; or
- 41.3.2 where no notification has been made, the date that the receiving Party becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

41.4 The Customer may terminate the Contract with immediate effect by notice in writing where:

41.4.1 the Supplier are using staff that are not experienced, certified, qualified and trained in the delivery of the Services specified in this Agreement;

41.4.2 the Supplier and its Staff employed in connection with the Services have failed to comply with the ESFA Rules and/or any other relevant Law governing the delivery of Services.

41.5 The Supplier may terminate the Contract with immediate effect by notice in writing where the Customer and its staff employed in connection with the Services have failed to comply with the SFA Rules

Termination on Default – Minor Breaches

41.6 Where the Supplier commits a Minor Breach of the Contract, the Customer shall be entitled to issue the Supplier with an “improvement notice”. Such improvement notice shall state the nature of the Minor Breach and give the Supplier a minimum of thirty (30) working days to remedy the Minor Breach.

41.7 If the Supplier commits three (3) Minor Breaches in a twelve (12) month rolling period this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 41.8.3.

Termination on Default – Material Default

41.8 The Customer may terminate the Framework Agreement by serving written notice on the Supplier with effect from the date specified in such notice, where the Supplier commits a Material Default and:

41.8.1 the Supplier has not remedied the Material Default to the satisfaction of the Customer within thirty (30) Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Material Default and requesting it to be remedied;

41.8.2 the Material Default is not, in the reasonable opinion of the Customer, capable of remedy;

41.8.3 if the Supplier has committed three (3) or more Minor Breaches within a twelve (12) month rolling period;

41.8.4 where any Contracting Authority terminates a Call-Off Contract awarded to the Supplier under this Contract as a consequence of a default by the Supplier;

41.9 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within thirty (30) Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 21 (Recovery of Sums Due).

41.10 If the Supplier has been suspended in accordance with Clause 40 and the outcome following such suspension shows the Supplier to be at fault, to have provided Services not to the required specification or that the Supplier has acted in breach of this Contract and/or the Framework Agreement

41.11 Any of the provisions in Regulation 73(1) of the Regulations apply

42. FRAMEWORK AGREEMENT

42.1 With the exception of where the Framework Agreement is terminated in accordance with clause 18.10 of the Framework Agreement, the Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if the Framework Agreement is terminated for any other reason..

43. CONSEQUENCES OF EXPIRY OR TERMINATION

43.1 Where the Customer terminates the Contract under Clause 41 and then makes other arrangements for the supply of Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Term. The Customer shall take all reasonable steps to mitigate such additional expenditure.

43.2 Save as otherwise expressly provided in the Contract:

43.2.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

43.2.2 Within thirty (30) Working Days of the date of termination or expiry of the Contract, the Supplier shall return to the Customer any data and Confidential Information belonging to the Customer that is in the Supplier's possession, power or control, either in its then current format or in a format nominated by Customer, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Customer, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Contract, or such period as is necessary for such compliance with the ESFA Rules.

43.2.3 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 19 (Payment and VAT), 21 (Recovery of Sums Due), 22 (Prevention of Bribery and Corruption), 26 (Data Protection Act), 27 (Freedom of Information), 28 (Confidential Information), 30 (Intellectual Property Rights), 31 (Records and Audit Access), 36 (Cumulative Remedies), 37 (Liability, Indemnity and Insurance), 43 (Consequences of Expiry or Termination), 45 (Recovery upon Termination) and 47 (Governing Law).

43.3 Upon termination of the Contract:

43.3.1 the Parties shall agree appropriate run-out arrangements that allow Apprentices to complete modules to the point that they can receive academic credit for the same (wherever possible);

43.3.2 the Supplier shall discuss with the Customer and shall issue to the Apprentices a statement informing the Apprentices of the termination, the agreed residual responsibilities of the parties and the academic arrangements for Apprentices;

43.3.3 the Customer shall pay to the Supplier all undisputed sums due (whether such charges are not recoverable through the Digital Account and/or via government co-investment);

43.3.4 the parties shall co-operate fully to ensure that any requirements set out in the ESFA Rules in relation to the Apprentices, payments and/or any other provisions as a result of termination are fully complied with.

44. DISRUPTION

- 44.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other Supplier employed by the Customer.
- 44.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 44.3 In the event of industrial action by the Staff, the Supplier shall seek the Customer's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 44.4 If the Supplier's proposals referred to in Clause 44.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
- 44.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

45. RECOVERY UPON TERMINATION

- 45.1 On the termination of the Contract for any reason, the Supplier shall:
- 45.1.1 immediately return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPR's and the Developed IPR's in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced during provision of the Services;
 - 45.1.2 immediately deliver to the Customer all Customer Material provided to the Supplier under this Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 45.1.3 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to a replacement supplier and/or the completion of any work in progress.
 - 45.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the way the Services have been provided for allowing the Customer or a replacement supplier to conduct due diligence.
- 45.2 Where the end of the Term arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause 45.1 free of charge. Otherwise, the Customer shall pay the Supplier's

reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

45.3 At the end of the Term (howsoever arising) the licence granted pursuant to Clause 30 shall automatically terminate without the need to serve notice.

46. FORCE MAJEURE

46.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.

46.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent or sub-contractor shall be regarded as due to Force Majeure only if that agent or sub-contractor is itself impeded by Force Majeure from complying with an obligation to the Supplier.

46.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 46.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

46.4 It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under the Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.

DISPUTES AND LAW

47. GOVERNING LAW

47.1 The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under English law.

48. TUPE

48.1 During the period of six (6) Months preceding the expiry of this Contract or after the Customer has given notice to terminate the Contract or the Supplier stops trading, and within twenty (20) Working Days of being so requested by the Customer, the Supplier shall subject to the Data Protection Legislation and obtaining appropriate consents, fully and accurately disclose to the Customer, for the purposes of TUPE, all information relating to its Staff engaged in providing the Services under the Contract, in particular but not necessarily restricted to, the following:

48.1.1 the total number of Staff whose employment with the Supplier is liable to be terminated at the expiry of the Contract but for any operation of law;

48.1.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates, but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given);

48.1.3 full information about the other terms and conditions on which the affected Staff are employed (including their working arrangements), or about where that information can be found;

48.1.4 details of pensions entitlements, if any; and

48.1.5 job titles of the members of Staff affected and the qualifications required for each position.

48.2 The Supplier shall, subject to the Data Protection Legislation and obtaining appropriate consents, permit the Customer to use the information for the purposes of TUPE and of re-tendering. The Supplier will co-operate with the re-tendering of the Service by allowing the transferee to communicate with and meet the affected Staff and/or their representatives.

48.3 Subject to Clause 37.13, the Supplier agrees to indemnify the Customer fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 48.

48.4 In the event that the information provided by the Supplier in accordance with Clause 48.1 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Customer of the inaccuracies and provide the amended information.

49. DISPUTE RESOLUTION

49.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

49.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

49.3 If the dispute cannot be resolved by the Parties pursuant to Clause 49.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 49.5 unless:

49.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or

49.3.2 the Supplier does not agree to mediation.

49.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.

49.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

49.5.1 A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within then (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or

unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to specify relevant mediation Supplier to appoint a Mediator;

- 49.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Advice, Conciliation and Arbitration Service (ACAS) to provide guidance on a suitable procedure;
- 49.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 49.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 49.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- 49.5.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

APPENDIX 1 – ORDER FORM



Apprenticeships
Framework - Order Form

APPENDIX 2 – STATEMENT OF REQUIREMENTS



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APPENDIX 3 – SLA & KPI'S



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